3-352

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~282.~~ 85

N. A. COWDREY ET AL., APPELLANTS,

vs.

THE GALVESTON, HOUSTON AND HENDERSON RAILROAD COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

FILED OCTOBER 2, 1874.

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1 In the circuit court of the United States for the eastern district of Texas, in the fifth circuit, sitting at Galveston.

N. A. COWDREY AND OTHERS, COMPLAINANTS,
v.
THE GALVESTON, HOUSTON AND HENDERSON Railroad Company and others, defendants. } No. 1. In chancery.

Be it remembered that, in the above-entitled and numbered cause, in which a final decree was rendered on the 19th day of August, 1869, from which decree an appeal was taken to the Supreme Court of the United States, and the said decree of August 19th, 1869, affirmed by said Supreme Court at its December term, 1870, there came on to be heard before the said circuit court at Galveston, at its May term, 1874, the petition and application of N. A. Cowdrey, the receiver of the Galveston, Houston and Henderson Railroad, the receiver appointed in said cause, for the settlement of his accounts, and for his discharge as such receiver; and at said term, to wit, on the 29th day of May, 1874, a
2 decree was made and entered by said circuit court, in said cause, adjusting and settling the accounts of said receiver, and directing certain payments to be made by him; from which last-named decree, in part, the said Cowdrey, as receiver, and as complainant in his own behalf, and on behalf of the other complainants in said cause, has prosecuted an appeal to the Supreme Court of the United States, and the record and proceedings of the said circuit court in said cause, then before the said court, in relation to the said matters, and upon which the said last-named decree was based, is here set out in words and figures following, to wit:

3 *Mandate of Supreme Court U. S.*

N. A. COWDREY ET AL.
v.
G. H. & H. R. R. CO., ET AL.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the { SEAL OF SUPREME COURT. } judges of the circuit court of the United Sates for the eastern district of Texas, greeting:

Whereas lately, in the circuit court of the United States for the eastern district of Texas, before you, or some of you, in a cause between N. A. Cowdrey, Edward Parsons, George Parsons, Frederick P. James, and Isaac Sherman, complainants, and The Galveston, Houston and Henderson Railroad Company, The Galveston, Houston and Henderson Railroad Company, successors of the first-named company, The Galveston and Houston Junction Railroad Company, George B. Nichols, J. L. Briggs, L. M. Hitchcock, Thomas W. Peirce, E. B. Nichols, Wm. R. Smith, J. H. Hutchings, Robert Mills, E. S. Wood, John Sealy, T. H. McMahan, S. Southwick, William H. Nichols, George Ball, and J. W. Jockusch, defendants, and P. C. Tucker and Robert Pulsford, intervenors and defendants, (in original bill,) and Robert Pulsford and P. C. Tucker, complainants, and The Galveston, Houston and Henderson

Railroad Company and others, defendants, (in cross-bill,) wherein
4 the decree of the said circuit court, entered in said cause on the 19th day of August, A. D. 1869, is in the following words, viz:

"This cause came on to be further heard at this term, before Associate Justice N. A. Swayne, the presiding judge of this court; and thereupon it was ordered, adjudged, and decreed as follows, viz: That the decree rendered by this court in this cause at the May term, 1868, on the 11th day of July, is hereby re-affirmed, and again made, as to the matters therein determined, and as to the foreclosure, in favor of the complainants and others, in like interest, of the equity of redemption in and to the following property described therein, to wit: 'All the said railroad built and constructed by the said original Galveston, Houston and Henderson Railroad Company, or for it, and under its charter and franchise, from the city of Galveston to the city of Houston, in the State of Texas, (not including herein the bridge across West Galveston Bay, from Eagle Grove to Virginia Point, or what is known as the Junction Railroad,) together with all and singular the railways, rails, bridges, fences, privileges, rights, and real estate owned at any time by
5 said original company in connection with said railroad, and all the tolls, income, issues, and profits thereof, and all the franchises of said company; and all lands at any time before March 6, 1860, used and occupied for railroad depots or stations, or said road from Galveston to Houston, and all buildings erected thereon; and also five hundred and twelve thousand acres of land unlocated, represented by eight hundred land certificates or warrants, now in the hands of the receiver, and the engines, tenders, and cars belonging to said original company and placed on said railroad,' except that a clerical mistake in the amount due at the time of said former decree, in lawful money of the United States, by reason of the issue of the six per cent. sterling bonds, is now corrected by referring to the context, so that the same shall stand and read as six hundred and thirteen thousand two hundred and ninety-four dollars and eight cents, instead of seven hundred and ninety-three thousand nine hundred and ninety-four dollars, with a corresponding correction throughout said decree.

6 "And it is further ordered, adjudged, and decreed that, to carry into effect the said decree of foreclosure, and to provide for an equitable distribution of the value of said mortgaged property among the several parties entitled thereto, the marshal of the eastern district of Texas shall proceed to sell all of said mortgaged property before described, and all the right, title, and interest of any of the parties in this cause thereto, at public auction and to the highest bidder, for cash, as hereinafter more definitely stated, between the hours of ten o'clock a. m. and four o'clock p. m., before the door of the court-house of this court, in the city of Galveston and State of Texas, after giving notice of such sale by advertisement in some newspaper published in the city of Galveston aforesaid, once a week for eight weeks, and by posting a proper notice thereof in three public places in said city, (provided that before the day of such sale some party entitled to redeem said property do not pay to said marshal or into court the full amount appearing, in accordance with said former decree,
7 then to due,) and shall make due return and report of such sale, and the names of the bidders thereat, and the amount of their bids, to this court, if then in session, and if not then in session, at the next thereof thereafter, for confirmation or further direction; and upon the confirmation of such sale, the bidder or bidders to whom said property may be adjudged shall at once pay into court,

to be deposited in some national bank, to be designated by this court, the amount in lawful money of the United States necessary to defray the cash demands against such fund as hereinafter stated; and such bidder or bidders may pay the remainder of their bids in the bonds mentioned in said former decree, having reference to their priorities as therein stated, in such proportion to the par value of said bonds and overdue coupons as the amount of such remainder of said bids bears to the amount of the same series of bonds and overdue coupons then outstanding. And, to ascertain more exactly such proportion, and the amount of the several series of bonds and coupons now outstanding, it is hereby ordered that all holders of such bonds or coupons, claiming a participation in the distribution of the proceeds of any
8 sale of the property claimed to be mortgaged to secure them in this cause, shall present their bonds and coupons to this court (to be deposited in some national bank, to be designated on such presentation, there to remain subject to further order, and to such directions as the court may make to ascertain their genuineness and to classify them) within one year from the date of this decree. And after any such sale as hereinbefore directed has been duly made and confirmed, and the amount of the successful bids paid, as before stated, the said marshal shall execute in due form a conveyance of the property bought to the purchaser.

"And it is further ordered, adjudged, and decreed that out of the cash payments to be made by the successful bidders at such sale there shall be first paid, under the direction of this court, the amounts that may be found justly due, as hereinafter stated, to the said Real and Personal Estate Association, and to the Galveston & Houston Junction Railroad Company, for the use of their property since it has been in the possession the receiver; and generally, all sums found to be properly due by said receiver, or any other
9 person acting under the authority of this court, or by its orders, upon the persons entitled thereto presenting their claims to this court, and obtaining an order and decree as to them, determining the proper amount thereof, subject to an appeal by any party interested therein; and that out of the proceeds of such sale be next paid the proper costs of this cause, to be taxed by the clerk of this court, and the expenses of the individual complainants in prosecuting this cause for the benefit of all parties interested, and that the remainder of said proceeds shall be distributed among the several holders of the mortgage bonds of said original Galveston, Houston and Henderson Railroad Company, according to their respective priorities, as previously determined; and in case any controversy shall arise thereon, reference may be had to this court for the determination thereof.

Claims due by receiver, to be paid upon, &c.

Any party interested to have right of appeal.

"And it is further ordered, adjudged, and decreed that Robert Pulsford and his trustee, Phillip C. Tucker, who have been permitted to intervene as defendants, and who have filed a cross-bill against the complainants, are not entitled to any relief against the complain-
10 ants in regard to the establishment of the lien claimed by them as prior to that held by said complainants in respect to said mortgage-property, and that their cross-bill be dismissed with costs; but that they have leave with the other defendants to claim and have payment out of the proceeds of the sale above ordered, if sufficient, of any amounts due to them as creditors of said original Galveston, Houston & Henderson Railroad Company, after the payment of the amounts due by said company upon the bonds issued thereby and described in the original bill of complaint.

"And it is further ordered, adjudged, and decreed as to the several matters reserved and not decided in the said former decree of this court, and upon the subsequent proceedings thereto, by and before the auditors and master appointed, directed by said decree, and upon the pleadings, proofs, evidence, and reports in this cause thereon, that the order entered at the April rule-day, 1869, in the clerk's office, confirming the report of the special master in chancery, as to his conclusions on the enquiries proposed in said former decree, be set aside,
11 and that on consideration of the exceptions of said complainants to said special master, said report, and the evidence, it appears to the court, and the court so finds, that no case has been made by the pleadings or proofs entitling the said complainants to an account against any of the individual defendants, or against them in their associate or corporate capacities, as the Real and Personal Estate Association, the Galveston and Houston Junction Railroad Company, and the successor, Galveston, Houston and Henderson Railroad Company, of the rents, income, issues, and profits of the property claimed by them as acquired after March 6th, 1860, or of the Galveston, Houston and Henderson Railroad while occupied and used by them since said date and up to the filing of the bill of complaint in this cause; and further, that no case has been made requiring to be subjected to the lien of the mortgages or deeds of trust asserted and shown by said complainants, the said rents, issues, incomes, and profits, or the said property acquired by said defendants since the said 6th day of March, 1860.

"Wherefore the said complainants' bill of complaint is now dismissed without costs, so far as it relates to and asserts their right to
12 such accounting, and to the liability to said mortgages and deeds of trust of said property acquired by said defendants in their associate and corporate capacities as aforesaid since said date, to wit: The real estate, lots, lands, machine-shops, station or depot houses, engine-houses, warehouses, and other buildings erected by the members of the said Real and Personal Estate Association, at the city of Galveston aforesaid, the rolling-stock acquired by the said association or the Galveston and Houston Junction Railroad Company since the date aforesaid, and the lands, track, rails, depots, and machine-shops and warehouses in the city of Houston and State of Texas, acquired or erected by the said Galveston and Houston Junction Railroad Company since the date aforesaid, and the amount of money on hand taken into his possession by the receiver in this cause, less the payments legally made for liabilities then due and owing by the defendants, and that the present receiver or whoever hereafter, under the authority of this court, may be in the proper charge and custody thereof, shall deliver
13 said property as to which the said bill is dismissed to the respective defendants owning the same, and that just compensation for the use, rent, and hire, and deterioration of all the property claimed by the Junction Railroad Company and the Real and Personal Estate
14 Association hereby declared not to be liable to the mortgages set up by the complainants, but taken into possession of the receiver, from the time the possession was taken to the final determination of this cause, shall be paid to said defendants, and the said amount of compensation, unless paid by funds in the hands of the receiver, shall be a first lien on all the mortgaged premises now ordered to be sold, to be paid prior to the mortgage-debts; and the amount properly due for such compensation shall be determined by this court, in such manner and at such time as may be necessary to protect the rights of all parties

hereto; and as to the said Galveston and Houston Junction Railroad Company, and all the individual defendants herein, in their individual character, the complainants' bill is dismissed without prejudice to the proper effect of the decree of foreclosure herein rendered."

As by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal taken by N. A. Cowdrey and others agreeably to the act of Congress in such case made and provided, fully
15 and at large appears.

And whereas in the present term of December, in the year of our Lord one thousand eight hundred and seventy, the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel: On consideration whereof, it is now here ordered, adjudged, and decreed by this court, that the decree of the said circuit court in this cause be and the same is hereby affirmed with costs, and that the said defendants recover against the said complainants N. A. Cowdrey and others twenty dollars for their *their* costs herein expended, and have execution therefor.

1st May, 1871. You, therefore, are hereby commanded th' such execution and proceedings be had in said cause as, according to right and justice and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the honorable Salmon P. Chase, Chief-Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and seventy.

16 Costs of defendant: clerk $, paid by complts.' attorney, $20.00; $20.00. Taxed by D. W. Middleton, clerk of the Supreme Court of the United States.

The above am't of $20.00 taxed atty.'s fee paid us by N. A. Cowdrey this 19th May, 1871.

BALLENGER & JACK,
Of Counsel for Defts.

(Endorsement:) No. 212. December term, 1870. Mandate Supreme Court United States. N. A. Cowdrey et al. vs. G. H. & H. Railroad Company et al. Filed May 20th, 1871. Levi Jones, clk.

Mandate of Supreme Court U. S.

G. H. & H. R. R. Co. et al.
v.
N. A. Cowdrey et al.

United States of America, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the eastern district of Texas, greeting:

[seal.] Whereas lately, in the circuit court of the United States for
17 the eastern district of Texas, before you, or some of you, in a cause between N. A. Cowdrey, Edwin Parsons, George Parsons, Frederick P. James, and Isaac Sherman, complainants, and the Galveston, Houston & Henderson Railroad Company, the Galveston, Houston and Henderson Railroad Company, successors of the first named company, the Galveston and Houston Junction Railroad Company,

George B. Nichols, J. L. Briggs, L. M. Hitchcock, Thomas W. Peirce, E. B. Nichols, Wm. R. Smith, J. H. Hutchings, Robert Mills, E. S. Wood, John Sealy, T. H. McMahan, S. Southwick, William H. Nichols, George Ball and J. W. Jockush, defendants, and P. C. Tucker and Robert Pulsford, intervenors and defendants, (in original bill,) and Robert Pulsford and P. C. Tucker, complainants, and the Galveston, Houston and Henderson Railroad Company and others, defendants, (in cross-bill,) wherein the decree of the said circuit court entered in said cause on the 19th day of August, A. D. 1869, is *is* in the following words, viz:

"This cause came on to be further heard at this term, before Associate Justice N. H. Swayne, the presiding judge of this court, and there-
18 upon it was ordered, adjudged, and decreed as follows, viz:

"That the decree rendered by this court in this cause, at the May term, 1868, on the 11th day of July, is hereby re-affirmed and again made, as to the matters therein determined, and as to the foreclosure, in favor of the complainants and others, in like interest, of the equity of redemption in and to the following property described therein, to wit: 'All the said railroad built and constructed by the said original Galveston, Houston and Henderson Railroad Company, or for it and under its charter and franchise, from the city of Galveston to the city of Houston, in the State of Texas, (not including herein the bridge across West Galveston Bay from Eagle Grove to Virginia Point, or what is known as the Junction Railroad,) together with all and singular the railways, rails, bridges, fences, privileges, rights, and real estate owned at any time by said original company in connection with said railroad; and all the tolls, income, issues, and profits thereof, and all the franchises of said company, and all lands at any time before March 6, 1860, used and occupied for railroad depots or stations
19 on said road from Galveston to Houston, and all buildings erected thereon; and also five hundred and twelve thousand acres of land unlocated, represented by eight hundred land certificates or warrants, now in the hands of the receiver; and the engines, tenders, and cars belonging to said original company, and placed on said railroad,' except that a clerical mistake in the amount due at the time of said former decree, in lawful money of the United States, by reason of the issue of the six per cent. sterling bonds, is now corrected by referring to the context, so that the same shall stand and read as six hundred and thirteen thousand two hundred and ninety-four dollars and eight cents, instead of seven hundred and ninety-three thousand nine hundred and ninety-four dollars, with a corresponding correction throughout said decree.

And it is further ordered, adjudged, and decreed that, to carry into effect the said decree of foreclosure, and to provide for an equitable distribution of the value of said mortgaged property among the several parties entitled thereto, the marshal of the eastern district of Texas
20 shall proceed to sell all of said mortgaged property before described, and all the right, title, and interest of any of the parties in this cause thereto, at public auction, and to the highest bidder, for cash, as hereinafter more definitely stated, between the hours of 10 o'clock a. m. and 4 o'clock p. m., before the door of the court-house of this court, in the city of Galveston and State of Texas, after giving notice of such sale by advertisement in some newspaper published in the city of Galveston aforesaid, once a week for eight weeks, and by posting a proper notice thereof in three public places in said city, (provided that, before the day of such sale, some party entitled to redeem

said property do not pay to said marshal or into court the full amount appearing, in accordance with said former decree, then to due,) and shall make due return and report of such sale, and the names of the bidders thereat, and the amount of their bids, to this court, if then in session, and if not then in session, at the next thereof thereafter, for confirmation or further direction; and upon the confirmation of such sale, the bidder or bidders to whom said property
21 may be adjudged, shall at once pay into court, to be deposited in some national bank, to be designated by this court, the amount, in lawful money of the United States, necessary to defray the cash demands against such fund, as hereinafter stated; and such bidder or bidders may pay the remainder of their bids in the bonds mentioned in said former decree, having reference to their priorities as therein stated, in such proportion to the par value of said bonds and overdue coupons as the amount of such remainder of said bids bears to the amount of same series of bonds and overdue coupons then outstanding. And to ascertain more exactly such proportion and the amount of the several series of bonds and coupons now outstanding, it is hereby ordered that all holders of such bonds or coupons claiming a participation in the distribution of the proceeds of any sale of the property claimed to be mortgaged to secure them in this cause, shall present their bonds and coupons to this court (to be deposited in some national bank, to be designated on such presentation, there to remain subject to further
22 order, and to such directions as the court may make to ascertain their genuineness and to classify them) within one year from the date of this decree. And after any such sale, as hereinbefore directed, has been duly made and confirmed, and the amount of the successful bids paid as before stated, the said marshal shall execute in due form a conveyance of the property bought to the purchaser.

"And it is further ordered, adjudged, and decreed, that out of the cash payments to be made by the successful bidders at such sale, there shall be first paid, under the direction of this court, the amounts that may be found justly due, as hereinafter stated, to the said Real and Personal Estate Association, and to the Galveston and Houston Junction Railroad Company, for the use of their property since it has been in the possession the receiver; and generally all sums found to be properly due by said receiver, or any other person acting under the authority of this court or by its orders, upon the persons entitled thereto presenting their claims to this court, and obtaining an order and decree as to them,
23 determining the proper amount thereof, subject to an appeal by any party interested therein, and that out of the proceeds of such sale be next paid the proper costs of this cause, to be taxed by the clerk of this court, and the expenses of the individual complainants in prosecuting this cause for the benefit of all parties interested, and that the remainder of said proceeds shall be distributed among the several holders of the mortgage-bonds of said original Galveston, Houston and Henderson Railroad Company, according to their respective priorities as previously determined; and in case any controversy shall arise thereon, reference may be had to this court for the determination thereof.

"And it is further ordered, adjudged, and decreed that Robert Pulsford, and his trustee, Philip C. Tucker, who have been permitted to intervene as defendants, and who have filed a cross-bill against the complainants, are not entitled to any relief against the complainants in regard to the establishment of the lien claimed by them as prior to that held by said complainants in respect to said mortgage-property,
24 and that their cross-bill be dismissed with costs; but that they

have leave with the other defendants to claim and have payment out of the proceeds of the sale above ordered, if sufficient, of any amounts due to them as creditors of said original Galveston, Houston and Henderson Railroad Company, after the payments of the amounts due by said company upon the bonds issued thereby, and described in the original bill of complaint.

"And it is further ordered, adjudged, and decreed, as to the several matters reserved and not decided in the said former decree of this court, and upon the subsequent proceedings thereto, by and before the auditors and master appointed, directed by said decree, and upon the pleadings, proofs, evidence, and reports in this cause thereon, that the order entered at the April rule-day, 1869, in the clerk's office, confirming the report of the special master in chancery, as to his conclusions on the inquiries proposed in said former decree, be set aside; and that in consideration of the exceptions of said complainants to said special master, said
25 report, and the evidence, it appears to the court, and the court so finds, that no case has been made by the pleadings or proofs, entitling the said complainants to an account against any of the individual defendants, or against them in their associate or corporate capacities, as the Real and Personal Estate Association, the Galveston and Houston Junction Railroad Company, and the successor, Galveston, Houston & Henderson Railroad Company, of the rents, income, issues, and profits of the property claimed by them, as acquired after March 6, 1860, or of the Galveston, Houston and Henderson Railroad while occupied and used by them since said date, and up to the filing of the bill of complaint in this cause; and further, that no case has been made requiring to be subjected to the lien of the mortgages or deeds of trust, asserted and shown by said complainants, the said rents, issues, incomes, and profits, or the said property acquired by said defendants since the said 6th day of March, 1860.

"Wherefore the said complainants' bill of complaint is now dismissed without costs, so far as it relates to and asserts their right to such accounting, and to the liability to said mortgages and deeds of trust
26 of said property acquired by said defendants in their associate and corporate capacities as aforesaid, since said date, to wit: The real estate, lots, lands, machine-shops, station or depot houses, engine-houses, warehouses, and other buildings erected by the members of the said Real and Personal Estate Association, at the city of Galveston aforesaid, the rolling-stock acquired by the said association or the Galveston & Houston Junction Railroad Company since the date aforesaid, and the lands, track, rails, depots, and machine-shops, and warehouses in the city of Houston, and State of Texas, acquired or erected by the said Galveston and Houston Junction Railroad Company since the date aforesaid, and the amount of money on hand, taken into his possession by the receiver in this cause, less the payments legally made for liabilities then due and owing by the defendants, and that the present receiver, or whoever hereafter, under the authority of this court, may be in the proper charge and custody thereof, shall deliver said property as to which the said bill is dismissed, to the respective defendants owning the same, and that just compensation for the use, rent, and hire,
27 and deterioration of all the property claimed by the Junction Railroad Company, and Real and Personal Estate Association, hereby declared not to be liable to the mortgages set up by the complainants, but taken into possession by the receiver, from the time the possession was taken to the final determination of this cause, shall be paid to said defendants, and the said amount of compensation, unless

paid by funds in the hands of the receiver, shall be a first lien on all the mortgaged premises now ordered to be sold to be paid prior to the mortgage-debts; and the amount properly due for such compensation shall be determined by this court in such manner and at such time as may be necessary to protect the rights of all parties hereto; and as to the said Galveston and Houston Junction Railroad Company, and all the individual defendants herein, in their individual character, the complainants' bill is dismissed without prejudice to the proper effect of the decree of foreclosure herein rendered."

As by the inspection of the transcripts of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal taken by the Galveston, Houston and Henderson Railroad Company and others, agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas in the present term of December, in the year of our Lord one thousand eight hundred and seventy, the said cause came on to be heard before the said Supreme Court on the said transcript of the record, and was argued by counsel; on consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be and the same is hereby affirmed with costs, and that the said complainants, N. A. Cowdrey et al., recover against the said defendants one thousand five hundred and fifty-four dollars and thirty-nine cents, for their costs herein expended, and have execution therefor.

1st May, 1871.

You, therefore, are hereby commanded that such execution and proceedings be had in said cause as, according to right and justice and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the honorable Salmon P. Chase, Chief Justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and seventy.

Costs of complainants: clerk, $1,534.39; attorney, 20.00—1,554.39 taxed by D. W. Middleton, clerk of the Supreme Court of the United States.

Supreme Court U. S., December term, 1870.

Costs of N. A. Cowdrey et al. in No. 119.

1869, Dec. term, ru., join & fil. 124 app. 21, ru. 28, fil. pa. 1.20 pre 40, ord. 28, con. 14, 1870, Dec. term, ap. 21, ru. 28, pre. & rec. 80, br. 40, greet 40, br. 6.00, arg. 56, mo. 28, jud. 164½, fil. 40, rec. pr. 56, mo. and an. 56, mand. 10.18½, fil. pa. 5.60, record 1,502.20, co. and co. 56—$1,534.39. $1,534.39, fee-book L. pa. 133.

Test: D. W. MIDDLETON, *C. S. C. U. S.*

71. May 5, recd. payt. per N. A. Cowdrey, esqr.
D. W. MIDDLETON, *C. S. C. U. S.*

(Endorsement:) No. 119, December term, 1870. Mandate. Supreme Court United States. Gal., Houston & H. R. R. Co. vs. Cowdrey et al. Filed May 19th, 1871. Levi Jones, clk.

31 *Order appointing Tipton Walker receiver.—From minutes Dec. term, 1866, Feby. 23d, 1867.*

Circuit court of the United States, eastern district of Texas.

N. A. COWDREY AND OTHERS
vs.
THE GALVESTON, HOUSTON & HENDERSON Railroad Company, and others.
} In chancery. Order appointing receiver.

On motion of Wm. G. Hale, esq., counsel for complainants, notice hereof having been duly served on the defendants, and upon the complaint and affidavits filed by complainants, and the court having heard Hon. Wm. P. Hill and Wm. P. Ballinger, esq., counsel for the defendants, and having considered the affidavits filed by defendants opposing said motion:

Now, upon consideration thereof the court doth find that it is necessary for the care and preservation of the mortgaged premises sought to be subjected to the payment of the claim of the complainants, as set forth in their bill of complaint herein filed, that said premises be
32 placed in the hands of a receiver, subject to the further order of the court herein.

It is therefore hereby ordered by the court, that Tipton Walker, esq. be and hereby is appointed receiver in this cause, with power to enter upon and take possession of the railroad of the said Galveston, Houston & Henderson Railroad Company, and of their entire property, real and personal, and of the Galveston, Houston, and Henderson Railroad Company, successor to the first-named company, and of their entire property, real and personal, and of the Galveston and Houston Junction Railroad Company, and of their entire property, real and personal, and of the premises claimed by the Real and Personal Estate Association to have been purchased, directly or indirectly, from the said Galveston, Houston, and Henderson Railroad Company, or from persons claiming to have been judgment creditors, or otherwise, of said Galveston, Houston, and Henderson Railroad Company, except, however, the real estate purchased and held by said association in the cities of Galveston and Houston.

33 And also all supplies of materials, including fuel and oil, wherever situated, belonging to said companies, or either of them, and provided by all or either of them for the use of the said railroad, and all side-tracks, switches, shops, water-stations, and turn-tables, and also all station-houses and warehouses, except those on the lots claimed by said Real and Personal Estate Association in the cities of Galveston and Houston, and all locomotives, engines, cars, and rolling-stock of every kind and description, and all tools and implements used in operating or repairing said railroad and other property, or provided therefor by said railroad companies, or either of them, or by said Real and Personal Estate Association, and also the moneys, credits, choses in action, books, papers, and all other property, real and personal, belonging to said railroad companies, or to either of them, by whatsoever name the same may be known or designated, and the same to demand and collect, by suit or otherwise, and to retain, hold, use, and dispose of,
34 under and subject to the order of this court, or any judge thereof, to be made in this behalf, and therewith and with the income and earnings of said premises, until otherwise ordered by this court, or some judge thereof, said receiver, in the corporate name of said railroad com-

pany, and by the exercise of its corporate franchises, shall maintain and keep in repair the said railroad, and operate and carry on the same, and shall transport persons and property to the best advantage for the interest of all parties concerned.

And to this end the officers, agents, and employees of said railroad companies, or either of them, having the custody or control of said property and premises, to be taken possession of by said receiver, as aforesaid, are hereby ordered and required, forthwith on the request of said receiver, to surrender the same to him, his agents and employees; and the legal possession and control of all and singular said property and effects shall vest in said receiver immediately upon his taking the oath and giving the bond as hereinafter required.

35 And the said receiver is hereby authorized and empowered to retain and employ such counsel, agents, servants, laborers, accountants, clerks, and assistants as may be reasonably necessary under him to carry this order into effect with economy and prudence; and, to that end, and subject to the further order of this court, or any judge thereof, to appropriate and apply the property, money, and effects aforesaid, together with the current earnings of said railroad, and the business to be carried on in and about the transportation of persons and property, so far as the same may be necessary; and, in the corporate name of said companies, or either of them, to enter into contracts for the obtaining of supplies for prosecuting said business, and for putting and maintaining said railroad and its equipment and rolling-stock in proper repair and condition.

It is further ordered that said receiver, out of the receipts of the business of the premises, after paying current expenses, pay from time as he shall be able so to do, the legal taxes and assessments on the prop-

36 erty in his possession by virtue of this order, and any rents due and to become due for the use and occupation of premises belonging to third persons, companies, and associations; also the balances due and to become due to other companies with which the said companies, or either of them, have running arrangements in reference to the transportation of persons and property, and amounts due and to become due for injuries to cattle along the line of the road, and to property transported by said companies, or either of them, and amounts to become due to third persons, companies, or corporations, not parties hereto, under contracts for the hire of rolling-stock in use by the company, and the property of other persons not parties hereto; and also pay the interest falling due during his possession of the premises to the Houston, Trinity and Tyler Railroad Company, and may make a suitable temporary arrangement with the city of Galveston for the use of the railroad-bridge across Galveston Bay, and that the receiver be permitted to borrow money

37 in the name of the companies defendant, or either of them, to anticipate the reasonable reliable receipts of the road, to enable the receiver to meet promptly existing engagements, and that when he shall so borrow he shall forthwith report to the court the sum borrowed and the time the loan has to run.

And it is further ordered that said receiver, without unnecessary delay, upon entering upon his duties, shall make a schedule or inventory and appraisement of all items of property, with an apt description of the same, which shall come into his hands under this order, and all choses in action and evidences of debt due to said companies, or either of them, from third persons, and file the same in this cause.

He shall keep, in systematic order, full accounts of his receipts and expenditures of money by himself and employees; and the gross receipts

arising from said business he shall deposit in some national bank or banks of good credit in the city of Galveston or in Houston, and he shall not use, or permit the same to be used, otherwise than in
38 pursuance of the order of this court; and he shall, within twenty days of the close of each calendar month, and oftener if required by the court, file monthly statements of the receipts and expenditures, and a like statement of all liabilities incurred by him during the same month which shall remain unsatisfied, and of all liabilities and dues of others incurred during the same time, to the trust in his hands remaining unpaid, with such other accounts and statements as may be necessary to a clear understanding of the condition of the trust in his hands at the period covered by each report.

The receiver shall make and return a separate inventory and appraisement of all the property which comes into his hands and is claimed to belong to the Galveston and Houston Junction Railroad Company or to the Real and Personal Estate Association, and he shall also keep clear and distinct accounts (to be filed monthly) showing the respective and relative receipts and earnings on account of all such prop-
39 erty, or fair and reasonable estimates of hire therefor, as distinguished from the property of the Galveston, Houston and Henderson Railroad.

Said receiver is hereby authorized, at his discretion, to dismiss from his service any agent or employee of said companies, or either of them; and before entering on his duties under this order he shall take an oath truly and faithfully to discharge his duties as receiver herein according to the best of his skill, ability, and understanding, in conformity with this order, and such other orders as shall be made by the court herein, from time to time hereafter, and shall also give bond to complainants as obligees or payees, for the use of all persons interested in said receivership, in the penal sum of twenty-five thousand dollars, conditioned for the true and faithful performance of his duties as receiver, and for the due and faithful payment over of all moneys which shall come into his hands as such receiver, according to the order and direction of this court, to be held for the use of all persons
40 interested in the subject-matter of this cause.

And the said receiver is hereby further authorized and empowered to audit and adjust all accounts against said railroad companies, or either of them, for supplies, labor, and material furnished to said companies, or either of them, for the prosecution of its proper and legitimate business, and, out of any surplus earnings over and above the current expenses of operating said railroad, to pay said accounts.

And it is expressly declared that this order is made without prejudice to the rights of any person not parties in this cause, and that such persons may at any time appear and make such application for relief as may be required by their respective interests.

JOHN C. WATROUS,
U. S. Judge.

41 *Tipton Walker qualified as receiver.—From minutes Dec'r term, 1866.—Febr'y 23, 1867.*

Tipton Walker, esq., the receiver appointed in and by the foregoing decree, having filed herein his bond, in the penal sum of twenty-five thousand dollars, faithfully to discharge the trusts & perform the duties of his office of receiver, and said bond having received the approval of the hon. court, he came forward and took the oath required of him by said decree in open court.

Decree of forec'osure.—From the minutes, May term, (July 11,) 1868.

In the circuit court of the United States, eastern district of Texas.

N. A. COWDREY, EDWIN PARSONS, GEORGE Parsons, Frederick P. James, and Isaac Sherman, complainants,
against
THE GALVESTON, HOUSTON AND HENDERSON Railroad Company; the Galveston, Houston and Henderson Railroad Company,
42 successors of the first-named company; the Galveston and Houston Junction Railroad Company, George B. Nichols, J. L. Briggs, L. M. Hitchcock, Thomas W. Pierce, E. B. Nichols, William R. Smith, J. H. Hutchings, Robert Mills, E. S. Wood, John Sealy, T. H. McMahan, S. Southwick, William H. Nichols, George Ball, and J. W. Joekusch, defendants, and Robert Pulsford and P. C. Tucker, intervenors and defendants. } In chancery.

This cause came on to be heard at this term, and was argued by counsel; and thereupon, and upon consideration thereof, it was ordered, adjudged, and decreed by the court as follows, viz: That the court finds by the evidence now before it that the Galveston, Houston and Henderson Railroad Company, originally incorporated by the act of February 7th, 1853, and hereinafter styled the original company, executed and issued three series of bonds, bearing interest, respectively, at the rate of six, ten, and eight per cent. per annum, hereinafter styled the six-per-cent. bonds, ten-per-cent. bonds, and eight-per-cent. bonds; that
43 there now remains outstanding of the six-per-cent. bonds four hundred and ninety-six bonds, making an aggrigate indebtedness for principal ot forty-nine thousand six hundred pounds sterling, and unpaid coupons of interest to the aggregate amount of forty-one thousand and six hundred and sixty-four pounds sterling, thus leaving due by the said original company, by reason of said six-per-cent. bonds, the aggrigate sum of ninety-one thousand and two hundred and sixty-four pounds sterling; that there now remains outstanding of the ten-per-cent. bonds, the aggregate sum of seven hundred and fifty thousand dollars principal, and also unpaid coupons of interest amounting, in the aggregate, to six hundred and seventy-five thousand dollars, thus leaving due by said original company the sum of one million four hundred and twenty-five thousand dollars, by reason of said ten-per-cent. bonds; that there remain outstanding of the eight-per-cent. bonds, the aggregate sum of one million nine hundred thousand dollars principal, and unpaid coupons now due to the amount of one million two hun-
44 dred and ninety-two thousand dollars, thus leaving due by said company, on account of said eight-per-cent. bonds, the sum of three million one hundred and ninety-two thousand dollars.

That the above-stated sum of ninety-one thousand and two hundred and sixty-four pounds sterling due on the six per-cent. bonds, and payable in England, is equivalent in value (at the rate of six dollars and seventy-two cents of legal-tender notes to one pound sterling) to seven hundred and ninety-three thousand nine hundred and ninety-four dollars in

lawful money of the United States; and the court also finds that the several complainants are the holders and owners of said six-per-cent. bonds and coupons to the amount of sixty-four thousand four hundred and fifty-eight pounds sterling; of said ten-per-cent. bonds and coupons, to the amount of four hundred and twenty-nine thousand six hundred and seventy dollars; and of said eight-per-cent. bonds and coupons, to
45 the amount of thirty-seven thousand four hundred and fifty-six dollars, and that they have filed their bill not only for the recovery of these amounts, but for the benefit, also, of all other holders of said bonds; that the court also finds that the said original company are now indebted to Robert Pulsford in the sum of fifteen thousand five hundred and eight $\frac{39}{100}$ dollars, with interest on forty-one thousand five hundred and seventy $\frac{50}{100}$ dollars, from March 12th, 1863, being the balance due him on the judgment held by him for his loan to said company on the 28th day of June, 1859, and making, in the aggregate, thirty-two thousand seven hundred and forty-five $\frac{26}{100}$ dollars.

And the court further finds that mortgages and deeds of trust were duly executed by said original company to secure the six, ten, and eight per cent. bonds, respectively, and the debt due to said Pulsford as follows: a mortgage and deed of trust to secure the six-per-cent. bonds on the first day of December, 1853; a mortgage and deed of trust to secure the ten-per-cent. bonds on the first day of June, 1855; a
46 mortgage and deed of trust to secure the eight-per-cent. bonds on the eighth day of October, 1857; a mortgage and deed of trust to secure the debt due said Pulsford on the 28' day of July, 1859; which said mortgages and deeds of trust were duly recorded and take precedence in the order of their dates.

And the court also finds that William Kent and Charles B. Haddock, who were the sole acting trustees in said mortgages and deeds of trust, had died before the filing of the bills, and that there are now no trustees acting under said deeds of trust; and the court also finds that the said original company has failed to pay the several amounts thus due upon the coupons of interest and upon the principal of said bonds and upon the debt to said Pulsford; and the successor, Galveston, Houston and Henderson Railroad Company, and the other defendants, have also failed to pay the same; by reason of which default both principal and interest are now due, and it has become necessary to foreclose
47 said mortages and order a sale of the property mortgaged in order to satisfy, in whole or part, such indebtedness.

And the court also finds that a sale of all the property hereinafter ordered to be sold, with the exception of land-scrip, was made by the sheriff of Galveston County to B. F. Terry, on the sixth day of March, 1860, by virtue of executions from the district court of said county, which said sale was valid and regular, but did not affect the rights conferred by said mortgages and deeds of trust; that the successor, or second Galveston, Houston & Henderson Railroad Company, continued in possession of all said property, except said land-scrip, until the appointment of the receiver in this cause, and that the defendants composing said successor company, and the Galveston and Houston Junction Railroad Company, and the Real and Personal Estate Association, took possession of said property, and have since retained it, with full notice of the mortgages and deeds of trust aforesaid, and after de-
48 fault in the payment of coupons of interest on said bonds, and have so remained in possession thereof without the consent or acquiescence of the holders of said bonds or of the complainants, and are thereby bound in equity to account to said bondholders for the rents,

issues, and profits produced by or out of said property or the use thereof and received by them from the time they so went into possession.

And the court further finds that the receiver is in possession of eight hundred land-certificates, scrip or warrants, the property of said original company, not sold or conveyed to the successor company, which are in nowise claimed by any other defendant in this cause, except said original company.

And the court also finds that the said property hereinafter ordered to be sold is still subject to said mortgages and deeds of trust, notwithstanding the defences set up by the defendants and by said Pulsford as intervenor.

Wherefore, it is ordered, adjudged, and decreed that, in consid-
49 eration of the premises and of the pleadings and proofs in the case, the said defendants do have until the termination of two months from this day to pay into court, in satisfaction of the indebtedness hereinbefore recited, the aggregate sum of five million four hundred and forty-three thousand seven hundred and thirty-nine dollars, in lawful money of the United States, being the aggregate amount of indebtedness as above stated, with subsequently-accruing interest thereon, which, if so paid, shall at once be deposited in the First National Bank of Galveston, subject to the further order of the court; and upon such payment all of the property now mortgaged, and hereinafter more particularly mentioned, shall at once stand and become free from said mortgages and deeds of trust, and no longer subject to said indebtedness, and shall be returned to the parties from whose possession it was taken by order of this court; but in default of such payment at the time
50 aforesaid, the said defendants, and each of them, do stand debarred and foreclosed of and from all equity of redemption and all right, title, and interest in and to the property so mortgaged, to wit, all the said railroad built and constructed by the said original Galveston, Houston and Henderson Railroad Company, or for it and under ts charter and franchises, from the city of Galveston to the city of Houston, in said State of Texas, (not including herein the bridge across West Galveston Bay from Eagle Grove to Virginia Point, or what is known as the Junction Railroad,) together with all and singular the railways, rails, bridges, fences, privileges, rights, and real-estate owned at any time by said original company in connection with said railroad, and all the tolls, income, issues, and profits thereof, and all the franchises of said company and all lands at any time before March 6th, 1860, used or occupied for railroad depots or stations on said road from Galveston to Houston, and all buildings erected thereon; and also five hundred
51 and twelve thousand acres of land unlocated, represented by eight hundred land certificates or warrants now in the hands of the receiver; and the engines, tenders, and cars belonging to said original company, and placed and used on said railroad.

And it is further ordered, adjudged, and decreed, that as this decree cannot, on account of the reference hereinafter ordered to a master, be made final as to all matters in controversy, and as certain of the defendants have given notice of their intention to appeal from a final decree when rendered, the court does not direct a sale of said mortgaged property, but will do so in said final decree, and this decree is without prejudice to the right of the defendants, or any of them, to an appeal, with supersedeas, from this decree, and all matters herein, within the time appointed by law after the final decree which may be made in this cause.

And it is further ordered, adjudged, and decreed that Thomas
52 N. Waul, esq., as special master in chancery, proposed by

the parties in the cause, and now appointed for this purpose, and Arthur T. Lynn, esqr., and Frank E. L'Estrange, esqr., as auditors, (or in case they decline to serve, such other persons as may hereafter be appointed,) at once proceed to examine the accounts of the successor, Galveston, Houston and Henderson Railroad Company, the Galveston and Houston Junction Railroad Company, and the Real and Personal Estate Association, and all papers and proceedings relating thereto; and the said master, upon the examination and statements of said auditors, and his own opinion deduced therefrom, and from any evidence pertinent to the subject, shall report to this court at its next term whether the said Galveston and Houston Junction Railroad was built, in whole or part, with money obtained out of the earnings of the Galveston, Houston and Henderson Railroad; whether the hire received by the Galveston and Houston Junction Railroad Company or the Real and Personal Estate
53 Association for rolling-stock, depot grounds and buildings, tools and machinery, and the use of the Galveston and Houston Junction Railroad, amounts to enough to pay the original cost of the property so hired, or any more or less sum; and whether the said Galveston and Houston Junction Railroad Company or the Real and Personal Estate Association have received out of the earnings of the Galveston, Houston and Henderson Railroad the amount of money advanced or put in by the members of said company and association, or any more or less sum; and, to arrive more satisfactorily at the real facts and the true and correct deductions therefrom, said master and auditor shall also report as to the result of any enquiry into said accounts which may be requested in writing by any party to this cause; and the said master will furnish with such report all such accounts, statements, and particulars which he or said auditors may deem necessary. And
54 said master and auditors shall receive such compensation as the court may direct, to be paid out of the proceeds of the property in controversy, or the funds in the hands of the receiver; and the court reserves until the coming in of said report its decision as to the liability to the mortgages of the complainants and of said Pulsford, of the real estate, depots, shops, machinery, and tools, the rolling-stock now claimed by the Galveston and Houston Junction Railroad Company and the Galveston and Houston Junction Railroad, and will, after due consideration, make a further decree thereon; and the court also, until such report is made, reserves its decision as to the personal and individual liability of the defendants for any matters involved in this cause and as to the necessity of any further accounts being had.

And it is further ordered, adjudged, and decreed that the receiver in this cause be continued until further order, and be under and subject to the orders heretofore made or such as may hereafter be made. And it is further ordered, adjudged, and decreed that immediately after the
55 confirmation of said sale of the whole or a part of the property decreed to be sold, any parties, whether holders of bonds of any of the aforesaid issues or other creditors of said Galveston, Houston and Henderson Railroad Company, or having any interest or claim in or to any of said property, may appear before the master in chancery hereinbefore named and by petition pro interesse suo present such claim for the examination and report of said master, in the ordinary course; and in the distribution of the fund arising from such sale, or that in the receiver's hands, such claims will be adjudicated by the court.

And it is further ordered that this decree is made without prejudice to the rights, legal or equitable, of any persons not parties hereto, and sha'l not be construed to decide on such rights.

And it is further ordered that the taxation of the costs in this cause and a decision as to their distribution be reserved until the further decree can be had, which will determine more completely the rights of the parties herein.

56 *Final decree.—From minutes, August* 19, 1869.

N. A. COWDREY AND OTHERS
v.
THE GALVESTON, HOUSTON AND HENDERSON Railroad Company and others.

The court having met pursuant to adjournment, the argument in this cause was continued, and the court, being now advised, pronounced the following decree, which was signed by the presiding judge and duly filed, viz:

Circuit court of the United States, eastern district of Texas.

N. A. COWDREY, EDWIN PARSONS, GEORGE Parsons, Frederick P. James, and Isaac Sherman, complainants,
against
THE GALVESTON, HOUSTON AND HENDERSON Railroad Company; The Galveston, Houston & Henderson Railroad Company, successors to the first-named company; The
57 Galveston and Houston Junction Railroad Company, George B. Nichols, J. L. Briggs, L. M. Hitchcock, Thomas W. Pierce, E. B. Nichols, Wm. R. Smith, J. H. Hutchings, Robert Mills, E. S. Wood, John Sealy, T. H. McMahan, S. Southwick, William H. Nichols, George Ball, and J. W. Joekusch, defendants, and Robert Pulsford and P. C. Tucker, intervenors and defendants. } In chancery.

This cause came on to be further heard at this term, before Associate Justice N. H. Swayne, the presiding judge of this court, and thereupon it was ordered, adjudged, and decreed as follows, viz, that the decree rendered by this court in this cause, at the May term, 1868, on the 11th day of July, is hereby re-affirmed and again made, as to the matters therein determined and as to the foreclosure, in favor of the complainants and others in like interest of the equity of redemption in and to the following property described therein, to wit: "All the said railroad
58 built and constructed by the said original Galveston, Houston and Henderson Railroad Company, or for it and under its charter and franchise, from the city of Galveston to the city of Houston, in the State of Texas, (not including herein the bridge across West Galveston Bay from Eagle Grove to Virginia Point, or what is known as the Junction Railroad,) together with all and singular the railways, rails, bridges, fences, privileges, rights, and real estate owned at any time by said original company in connection with said railroad, and all the tolls, income, issues, and profits thereof, and all the franchises of said company, and all lands at any time before March 6, 1860, used and occupied for railroad depots or stations on said road from Galveston to

Houston, and all buildings erected thereon, and also five hundred and twelve thousand acres of land unlocated, represented by eight hundred land certificates or warrants, now in the hands of the receiver, and the engines, tenders, and cars belonging to said original company and placed on said railroad," except that a clerical mistake in the
59 amount due at the time of said former decree, in lawful money of the United States, by reason of the issue of the six-per-cent. sterling bonds, is now corrected by referring to the context so the same shall stand and read as six hundred and thirteen thousand two hundred and twenty-four dollars and eight cents, instead of seven hundred and ninety-three thousand nine hundred and ninety-four dollars, with a corresponding correction throughout said decree.

And it is further ordered, adjudged and decreed that, to carry into effect the said decree of foreclosure, and to provide for an equitable distribution of the value of said mortgaged property among the several parties entitled thereto, the marshal of the eastern district of Texas shall proceed to sell all of said mortgaged property before described and all the right, title, and interest of any of the parties in this cause thereto, at public auction, and to the highest bidder, for cash, as hereinafter more definitely stated, between the hours of 10 o'clock a. m. and four o'clock p. m., before the door of the court-house of this court,
60 in the city of Galveston, and State of Texas, after giving notice of such sale by advertisement in some newspaper published in the city of Galveston aforesaid once a week for eight weeks, and by posting a proper notice thereof in three public places in said city, (provided, that before the day of such sale some party entitled to redeem said property do not pay to said marshal or into court the full amount appearing in accordance with said former decree then to be due,) and shall make due return and report of each sale, and the names of the bidders thereat, and the amount of their bids, to this court, if then in session; and if not then in session, at the next term thereof thereafter, for confirmation or further direction; and upon the confirmation of such sale, the bidder or bidders to whom said property may be adjudged shall at once pay into court, to be deposited in some national bank to be designated by this court, the amount in lawful money of the United States necessary to defray the cash demands against such fund as hereinafter stated; and such bidder or bidders may pay the remainder of their bids in
61 the bonds mentioned in said former decree, having reference to their priorities as therein stated, in such proportion to the par value of said bonds and over-due coupons as the amount of such remainder of *of* said bids bears to the amount of the same series of bonds and over-due coupons then outstanding; and to ascertain more exactly such proportion and the amounts of the several series of bonds and coupons now outstanding, it is hereby ordered that all holders of such bonds or coupons claiming a participation in the distribution of the proceeds of any sale of the property claimed to be mortgaged to secure them in this cause, shall present their bonds and coupons to this court, (to be deposited in some national bank to be designated on such presentation, there to remain subject to further order, and to such directions as the court may make to ascertain their genuineness and to classify them,) within one year from the date of this decree; and after any such sale as hereinbefore directed has been duly made and confirmed, and the amount of the successful bids paid as before stated, the said mar-
62 shal shall execute in due form a conveyance of the property bought to the purchaser.

And it is further ordered, adjudged and, decreed that, out of the

cash payments to be made by the successful bidders at such sale, there shall be first paid, under the direction of this court, the amounts that may be found justly due as hereinafter stated to the said Real and Personal Estate Association and to the Galveston and Houston Junction Railroad Company for the use of their property since it has been in the possession of the receiver, and generally all sums found to be properly due by said receiver or any other person acting under the authority of this court, or by its orders upon the persons entitled thereto presenting their claims to this court, and obtaining an order or decree as to them, determining the proper amount thereof, subject to an appeal by any party interested therein; and that out of the proceeds of such sale be next paid the proper costs of this court, to be taxed by the clerk of this court, and the expenses of the individual complainants in prose-
63 cuting this cause for the benefit of all parties interested; and that the remainder of said proceeds shall be distributed among the several holders of the mortgage-bonds of said original Galveston, Houston and Henderson Railroad Company, according to their respective priorities as previously determined; and in case any controversy shall arise thereon, reference may be had to this court for the determination thereof.

And it is further ordered, adjudged and decreed that Robert Pulsford and his trustee, Philip C. Tucker, who have been permitted to intervene as defendants, and who have filed a cross-bill against the complainants, are not entitled to any relief against the complainants in regard to the establishment of the lien claimed by them as prior to that held by said complainants in respect to said mortgaged property, and that their cross-bill be dismissed with costs; but that they have leave, with the other defendants, to claim and have payment out of the proceeds of the sale above ordered, if sufficient, of any amounts due to them as creditors of said original Galveston, Houston and Hen-
64 derson Railroad Company, after the payment of the amounts due by said company upon the bonds issued thereby and described in the original bill of complaint.

And it is further ordered, adjudged, and decreed, as to the several matters reserved and not decided in the said former decree of this court, and upon the subsequent proceedings thereto by and before the auditors and master appointed, directed by said decree, and upon the pleadings, proofs, evidence, and reports in this cause thereon, that the order entered at the April rule-day, 1869, in the clerk's office, confirming the report of the special master in chancery as to his conclusions on the enquiries proposed in said former decree, be set aside, and that in consideration of the exceptions of said complainants to said special master's said report and the evidence it appears to the court, and the court so finds, that no case has been made by the pleadings or proofs entitling the said complainants to an account against any of the individual defendants or against them in their associate or cor-
65 porate capacities as the Real and Personal Estate Association, the Galveston and Houston Junction Railroad Company, and the successor, Galveston, Houston and Henderson Railroad Company, of the rents, income, issues, and profits of the property claimed by them, as acquired after March 6th, 1860, or of the Galveston, Houston and Henderson Railroad, while occupied and used by them since said date and up to the filing of the bill of complaint in this cause; and further, that no case has been made requiring to be subjected to the lien of the mortgages or deeds of trust asserted and shown by said complainants the said rents, issues, income, and profits, or the said property acquired by said defendants, since the said 6th day of March, 1860.

Wherefore, the said complainants' bill of complaint is now dismissed without costs, so far as it relates to and asserts their right to such accounting and to the liability to said mortgages and deeds of trust of said property acquired by said defendants in their associate
66 and corporate capacities as aforesaid since said date, to wit, the real estate, lots, lands, machine-shops, station or depot houses, engine-houses, warehouses, and other buildings erected by the members of the said Real and Personal Estate Association, at the city of Galveston aforesaid, the rolling-stock acquired by the said association or the Galveston and Houston Junction Railroad Company since the date aforesaid, and the lands, track, rails, depots, and machine-shops, and warehouses in the city of Houston, and State of Texas, acquired by the said Galveston and Houston Junction Railroad Company since the date aforesaid, and the amount of money on hand taken into his possession by the receiver in this cause, less the payments legally made for liabilities then due and owing by the defendants, and that the present receiver, or whoever hereafter, under the authority of this court, may be in the proper charge and custody thereof, shall deliver said property, as to which the said bill is dismissed, to the respective defendants
67 owning the same, and that just compensation for the use, rent, and hire and deterioration of all the property claimed by the Junction Railroad Company and Real and Personal Estate Association hereby declared not to be liable to the mortgages set up by the complainants, but taken into possession of the receiver, from the time the possession was taken to the final determination of this cause, shall be paid to said defendants, and the said amount of compensation, unless paid by funds in the hands of the receiver, shall be a first lien on all the mortgaged premises now ordered to be sold, to be paid prior to the mortgage debts; and the amount properly due for such compensation shall be determined by this court, in such manner and at such time as may be necessary to protect the rights of all parties hereto.

And as to the said Galveston and Houston Junction Railroad Company, and all the individual defendants herein, in their individual character, the complainants' bill is dismissed, without prejudice
68 to the proper effect of the decree of foreclosure herein rendered.

August 19, 1864.

N. H. SWAYNE,
Asso. Jus. Sup. Court & Judge of the 5th Judicial Circuit.

Order allowing appeal and appointing complainants, or one of them, receiver.—From minutes August 19, 1869.

In the circuit court of the United States for the eastern district of Texas.

BETWEEN N. A. COWDREY & OTHERS, COMplainants,
and
THE GALVESTON, HOUSTON & HENDERSON Railroad Company and others, defendants. } In chancery.

The complainants in this cause and certain of the defendants having stated that they severally desired to appeal from so much of the preliminary decree and the final decree this day made as affects their interests, and having arranged in part by agreement between themselves as to the amounts of their respective appeal bonds, and the dis-
69 position of the property involved in this cause pending the appeal; and the court being satisfied that such arrangement is proper and beneficial, it is now ordered by the court by consent of all parties

except Robert Pulsford and P. C. Tucker, that the individual defendants, the successor Galveston, Houston and Henderson Railroad Company, the Galveston and Houston Junction Railroad Company, and the members of the Real and Personal Estate Association, or any of said defendants, be allowed an appeal to the Supreme Court of the United States from so much of said preliminary and final decrees as relates to the property described in said decrees as belonging to the original Galveston, Houston and Henderson Railroad Company, which appeal shall act as a supersedeas and suspend the sale of said property, (except the land scrip hereinafter mentioned,) and subsequent proceedings dependant on such sale and ordered in said decrees on their furnishing an appeal bond in the sum of twenty thousand dollars, to be ap-
70 proved by the complainants, or by a judge of this court; and that the said complainants, or any of them, be allowed an appeal to the Supreme Court of the United States from so much of said final decree as finds that no account of the rents, income, and profits of said Galveston, Houston and Henderson Railroad, or of the property acquired by any of the defendants since March 6th, 1860, and used in connection with said railroad, can be claimed by said complainants against said individual defendants, or the associations and corporate bodies made defendants; and that said property acquired since said date, and mentioned in said decree, is not liable to the liens of the deeds of trust and mortgages claimed by said complainants, and from so much of said decree as dismisses the complainants' bill of complaint as to the above matters upon the said complainants, or any one or more of them, furnishing an appeal bond in the sum of ten thousand dollars, to be approved by said defendants or a judge of this court, which shall thereupon act as a supersedeas and stay any action under said part of
71 said decree pending the appeal; that the transcript of the record on the appeal shall be taken and filed by the defendants, and the said complainants may take an appeal on their behalf referring to said transcript.

And is is further ordered on like consent, that as differences have arisen in respect to the efficiency and economy of the management of the property claimed by both parties by a receiver, and as the said defendants object to such management, and the said complainants are willing to undertake the responsibility of the management of such property with a view to greater efficiency and economy, if possible, that Tipton Walker, receiver of this court, in this cause, do on the first day of October next turn over and deliver to the complainants in this cause, or such of them as may assume charge thereof, or their appointee, all the real and personal property now in his possession as such receiver, taking proper receipts therefor, a duplicate of which receipt shall be returned to the court; and do at the same time, or as soon as possi-
72 ble thereafter, file in this court his final accounts as receiver for examination and settlement by the court, if practicable, without the further intervention of master or auditors; and thereupon the said complainants, by themselves or their appointee, shall take all such real and personal property into their possession and management as a receiver of this court, subject to the authority of this court, and under the previous orders of this court directed to said receiver, and such other orders as may hereafter be made, and shall state, keep, and report monthly to the court strict and regular accounts in conformity with the order of this court appointing a receiver in this cause, and their books and accounts shall be at all reasonable times subject to the inspection of the defendants in this suit, or any of them, or their counsel; and for the security and protection of the defendants, the said complain-

Wherefore, the said complainants' bill of complaint is now dismissed without costs, so far as it relates to and asserts their right to such accounting and to the liability to said mortgages and deeds of trust of said property acquired by said defendants in their associate
66 and corporate capacities as aforesaid since said date, to wit, the real estate, lots, lands, machine-shops, station or depot houses, engine-houses, warehouses, and other buildings erected by the members of the said Real and Personal Estate Association, at the city of Galveston aforesaid, the rolling-stock acquired by the said association or the Galveston and Houston Junction Railroad Company since the date aforesaid, and the lands, track, rails, depots, and machine-shops, and warehouses in the city of Houston, and State of Texas, acquired by the said Galveston and Houston Junction Railroad Company since the date aforesaid, and the amount of money on hand taken into his possession by the receiver in this cause, less the payments legally made for liabilities then due and owing by the defendants, and that the present receiver, or whoever hereafter, under the authority of this court, may be in the proper charge and custody thereof, shall deliver said property, as to which the said bill is dismissed, to the respective defendants
67 owning the same, and that just compensation for the use, rent, and hire and deterioration of all the property claimed by the Junction Railroad Company and Real and Personal Estate Association hereby declared not to be liable to the mortgages set up by the complainants, but taken into possession of the receiver, from the time the possession was taken to the final determination of this cause, shall be paid to said defendants, and the said amount of compensation, unless paid by funds in the hands of the receiver, shall be a first lien on all the mortgaged premises now ordered to be sold, to be paid prior to the mortgage debts; and the amount properly due for such compensation shall be determined by this court, in such manner and at such time as may be necessary to protect the rights of all parties hereto.

And as to the said Galveston and Houston Junction Railroad Company, and all the individual defendants herein, in their individual character, the complainants' bill is dismissed, without prejudice
68 to the proper effect of the decree of foreclosure herein rendered.

August 19, 1864.

N. H. SWAYNE,
Asso. Jus. Sup. Court & Judge of the 5th Judicial Circuit.

Order allowing appeal and appointing complainants, or one of them, receiver.—From minutes August 19, 1869.

In the circuit court of the United States for the eastern district of Texas.

BETWEEN N. A. COWDREY & OTHERS, complainants,
and
THE GALVESTON, HOUSTON & HENDERSON Railroad Company and others, defendants. } In chancery.

The complainants in this cause and certain of the defendants having stated that they severally desired to appeal from so much of the preliminary decree and the final decree this day made as affects their interests, and having arranged in part by agreement between themselves as to the amounts of their respective appeal bonds, and the dis-
69 position of the property involved in this cause pending the appeal; and the court being satisfied that such arrangement is proper and beneficial, it is now ordered by the court by consent of all parties

except Robert Pulsford and P. C. Tucker, that the individual defendants, the successor Galveston, Houston and Henderson Railroad Company, the Galveston and Houston Junction Railroad Company, and the members of the Real and Personal Estate Association, or any of said defendants, be allowed an appeal to the Supreme Court of the United States from so much of said preliminary and final decrees as relates to the property described in said decrees as belonging to the original Galveston, Houston and Henderson Railroad Company, which appeal shall act as a supersedeas and suspend the sale of said property, (except the land scrip hereinafter mentioned,) and subsequent proceedings dependant on such sale and ordered in said decrees on their furnishing an appeal bond in the sum of twenty thousand dollars, to be ap-
70 proved by the complainants, or by a judge of this court; and that the said complainants, or any of them, be allowed an appeal to the Supreme Court of the United States from so much of said final decree as finds that no account of the rents, income, and profits of said Galveston, Houston and Henderson Railroad, or of the property acquired by any of the defendants since March 6th, 1860, and used in connection with said railroad, can be claimed by said complainants against said individual defendants, or the associations and corporate bodies made defendants; and that said property acquired since said date, and mentioned in said decree, is not liable to the liens of the deeds of trust and mortgages claimed by said complainants, and from so much of said decree as dismisses the complainants' bill of complaint as to the above matters upon the said complainants, or any one or more of them, furnishing an appeal bond in the sum of ten thousand dollars, to be approved by said defendants or a judge of this court, which shall thereupon act as a supersedeas and stay any action under said part of
71 said decree pending the appeal; that the transcript of the record on the appeal shall be taken and filed by the defendants, and the said complainants may take an appeal on their behalf referring to said transcript.

And is is further ordered on like consent, that as differences have arisen in respect to the efficiency and economy of the management of the property claimed by both parties by a receiver, and as the said defendants object to such management, and the said complainants are willing to undertake the responsibility of the management of such property with a view to greater efficiency and economy, if possible, that Tipton Walker, receiver of this court, in this cause, do on the first day of October next turn over and deliver to the complainants in this cause, or such of them as may assume charge thereof, or their appointee, all the real and personal property now in his possession as such receiver, taking proper receipts therefor, a duplicate of which receipt shall be returned to the court; and do at the same time, or as soon as possi-
72 ble thereafter, file in this court his final accounts as receiver for examination and settlement by the court, if practicable, without the further intervention of master or auditors; and thereupon the said complainants, by themselves or their appointee, shall take all such real and personal property into their possession and management as a receiver of this court, subject to the authority of this court, and under the previous orders of this court directed to said receiver, and such other orders as may hereafter be made, and shall state, keep, and report monthly to the court strict and regular accounts in conformity with the order of this court appointing a receiver in this cause, and their books and accounts shall be at all reasonable times subject to the inspection of the defendants in this suit, or any of them, or their counsel; and for the security and protection of the defendants, the said complain-

ants so taking charge thereof shall give a bond in the sum of three hundred and fifty thousand dollars, and payable to the Galveston & Houston Junction Railroad Company for the benefit of all parties
73 interested; and whereon any party may sue, conditioned, substantially, that they, said complainants, will restore said property, or so much thereof as they may be finally decreed to restore to the parties entitled to it under the decree of the supreme court on appeal, and to pay such reasonable compensation for the use or profits of said property while in their charge, after deducting the expenses of management and operation, and a draft of which said bond has been agreed on by counsel, marked "A," and filed in this court. And thereupon the said defendants withdraw their motions heretofore filed for the removal of the present receiver, and the grounds stated in support thereof.

And as neither appeal is intended to act as a supersedeas, as to so much of the said decree as directs a sale of the land-scrip or land-warrants in the hands of the receiver, said sale shall proceed as if no appeal had been taken, and the proceeds applied as before stated, first allowing to H. B. Andrews, in settlement of his services in regard
74 to such land-scrip, sum sum as may be found by the court to be just, out of which he shall repay to the fund in charge of the receiver the amount advanced to him therefrom.

And as no appeal is to be taken from so much of said decree as directs the presenting and examination of the outsanding bonds within one year, or from so much thereof as directs the final adjusment of said receiver's accounts, the proceedings directed in regard thereto shall continue as if no appeal had been taken until the conclusion thereof.

And it is further ordered by the court that if the said Robert Pulsford and P. C. Tucker, or either of them, desire to take an appeal from so much of said decree as relates to their interest, then they are allowed such appeal upon furnishing an appeal-bond in the sum of one thousand dollars.

And it is further ordered by the court that Thomas N. Iraul, esq., be appointed special master in chancery for the purpose of hearing testimony and reporting the same with his conclusions therefrom to
75 this court, in regard to the proper rent and hire to be paid out of the gross earnings of the railroad and other property involved in this cause, to the several parties who may be entitled thereto upon the determination of this cause on appeal, upon the supposition that such parties are, by the result of such appeal, recognized as owners thereof; such report to be subject to exceptions in the usual course, and said master shall also inquire and report what is a fair and just hire to be paid by the receiver for the use of the bridge across Galveston Bay, subject to exception *as* the usual course; and it is further ordered by this court, by consent of parties, that the several bonds directed to be furnished herein may be executed at any time before the twentieth day of September next, and shall be marked by the clerk as filed at some day within ten days from the date of the decree.

76 *Order. Rec'ver not allowed to incur expense.—From minutes August 19, 1869.*

U. S. circuit court eastern district of Texas.

N. A. COWDREY & OTHERS,
v.
THE GALVESTON, HOUSTON & HENDERSON RAILroad Company & others.

It is ordered that the receiver in this cause shall make no purchases

and incur no liabilities to bind the property or funds in this cause beyond the usual and necessary operating expenses of the road except upon notice to all the parties and the order of this court.

Order modifying order as to expenses to be incurred by receiver.—From minutes August 31st, 1869.

United States circuit court for the eastern district of Texas.

NATHANIEL A. COWDREY ET AL.
vs.
THE GALVESTON, HOUSTON AND HENDERSON Railroad Company.

It is ordered by the court that the application of Nathaniel A.
77 Cowdrey (who has qualified under the agreed order heretofore made to take charge of the property involved in this cause) for leave to purchase additional rolling-stock be pos'poned until December 1st, 1869, or as soon thereafter as counsel can be heard, when it will be considered, either party having liberty to take testimony on the subject, and that meanwhile said Cowdrey be governed by the orders and instructions heretofore given by this court to the receiver.

And it is further ordered by the court that the order heretofore made on the nineteenth day of August, 1869, in relation to the action of the receiver be so modified as to provide that the receiver may make such expenses for operating the road and keeping the road and its motive power, machinery, &c., in repair, as may be useful for its current business, including such expenses as may be proper to promote and increase such business, provided that no indebtedness shall be incurred beyond the funds in hand without a special order of this court after due notice.

78 *Bond of N. A. Cowdrey as receiver.—Filed Sept. 2d, 1869.*

In the circuit court of the United States, eastern district of Texas.

BETWEEN N. A. COWDREY AND OTHERS, COMplainants,
and
THE GALVESTON, HOUSTON AND HENDERSON Railroad Company and others, defendants. } In chancery.

Know all men by these presents, that we, N. A. Cowdrey, one of the said complainants, as principal, and Frederick P. James and Russell Sage, as sureties, are held and firmly bound unto the Galveston and Houston Junction Railroad Company in the sum of three hundred and fifty thousand dollars, for the payment of which, well and truly to be made, we hereunto bind ourselves, our heirs, executors, and administrators firmly by these presents. Witness our hands and seals this twenieth day of August, A. D. 1869.

Whereas a decree has been made by the circuit court of the
79 United States for the eastern district of Texas, at Galveston, in a certain cause in equity, wherein N. A. Cowdrey and others ar complainants and the Galveston, Houston and Henderson Railroad Company and others are defendants, from which decree appeals have been taken, as in and by the record of said cause more fully appears;

And whereas it is the desire of the parties to provide for the preser-

vation of all said property and the profitable use thereof, the connexions and operation of said railroads, depots, etc., until the termination of this cause under the final decision of the Supreme Court of the United States;

And whereas, in pursuance of said desire, it has been agreed by and between the said parties that all of the aforesaid property shall be delivered into the hands of the aforesaid complainants, or some of them, to be by them preserved, employed, and used as aforesaid until the final termination of this cause, the said plaintiffs to be subject to the orders of the circuit court, and liable to all the duties which a receiver would be subject and liable to in law and equity;

80 And whereas it has been further agreed that, in case it shall be finally adjudicated by the Supreme Court that none of the property in dispute is liable to be taken in satisfaction of, or as subject to the mortgages under which the complainants claim, then the complainants shall deliver the whole of said property in as good order as it now is, usual wear and tear excepted, together with all the net earnings or profits which they may have made therefrom, or which by a just, prudent, and faithful management thereof they ought to have made.

And in case it shall be held by the said Supreme Court that the road, franchises, and other property of the original Galveston, Houston and Henderson Railroad Company are alone subject to the mortgage, but that the other property claimed by the complainants in their bill is not subject to said mortgages, then the said complainants shall deliver all of said property to the parties entitled to the same under the said decree of the Supreme Court, together with such just and reasonable compensation for the use of the property in the mean time as may be

81 agreed upon by the parties, or, in case no such agreement is made, as shall be determined by the circuit court.

Now, therefore, the condition of the above obligation is such, that if the above-bounded complainants shall and will, well, truly, and faithfully manage, use, and employ all of the aforesaid property as a receiver ought to do, according to law and equity paying over the net proceeds thereof, as hereinbefore stated, and delivering the property at the determination of the suit, agreeably to the hereinbefore-recited agreement and according to the final decree of the Supreme Court; and if the obligor, principal herein, shall comply with all the orders, decrees, and judgments of said circuit court, or of the Supreme Court, then and in that event this obligation to become void; otherwise to remain in full force and virtue.

N. A. COWDREY. [SEAL.]
RUSSELL SAGE. [SEAL.]
FREDERICK P. JAMES. [SEAL.]

Approved:

N. H. SWAYNE,
Ass. Jus. Sup. Court U. S.

82 *Oath of N. A. Cowdrey as receiver.—Filed 2d Sept.*, 1869.

In the circuit court of the United States eastern district of Texas.

BETWEEN N. A. COWDREY AND OTHERS, complainants, *and* THE GALVESTON, HOUSTON AND HENDERSON Railroad Company and others, defendants. } In chancery.

I, N. A. Cowdrey, of the city and State of New York, having been

appointed by said court to act as receiver in the above-entitled cause, being now duly sworn, say on oath, that I will well and faithfully exercise the functions and powers of said office, and discharge its duties under the orders of this court and of the Supreme Court of the United States.

N. A. COWDREY.

Subscribed and sworn to before me the second day of September, 1869.

N. H. SWAYNE,
Asso. Jus. Sup. Court U. S.

(Endorsements:) U. S. circuit court. Nathaniel A. Cowdrey et al., v. The Galveston, Houston & Henderson R. R. Co. Receiver's oath Sept. 1, 1869. Filed 2 Septr, 1869. Levi Jones, clk.

83 *Order of sale under mandate.—From minutes special term June 2d, 1871.*

Circuit court of the United States, eastern district of Texas, special term May, 1871.

N. A. COWDREY AND OTHERS
against
THE GALVESTON, HOUSTON & HENDERSON Railroad Company and others.

Order of sale under mandate of Supreme Court of the United States, and establishing the amount due the defendants under said mandate.

The mandate of the Supreme Court of the United States in the above-entitled cause having been filed in said cause in this court, and the court having examined the same, and having heard the counsel of the parties in relation thereto, and having heard the various motions in the cause, and having considered the report of the special master T. N. Waul on the matters and things referred to him, and the exceptions of the parties made to said master's report—

Now, upon consideration of the court, it is ordered:

1st. That the master's report and the exceptions thereto be, and
84 the same are hereby, overruled in part and sustained in part, so as to conform to the orders or decrees herein below set forth.

2d. It is ordered by the court that the premises and property described in the mortgages set forth in the bill of complaint known as the Galveston, Houston and Henderson Railroad, and all its rights and franchises described in the decree of this court made August 19, 1869, to include all property purchased and held by the said receiver or his predecessor during the pending of this suit, and up to said sale in execution of his trust as receiver, be sold by the United States marshal for the eastern district of Texas, in the manner prescribed in said last-named decree, on the 1st day of December, A. D. 1871, or upon such day thereafter as the marshal shall for cause adjourn said time of sale; that the marshal shall advertise said sale as provided in said order; that the fees and compensation of said marshal for making said sale are hereby fixed and limited by the agreement of said marshal at the sum of one
85 thousand dollars, exclusive of the cost of advertising said sale.

3d. That from the proceeds of said sale there shall be paid to the Galveston & Houston Junction Railroad Company, as provided in

said decree of Aug. 19, 1869, for use and hire and restoration of property while in hands of receiver, the sum of..... $248,669 46

which sum is found to be due by the allowance of 8% annual interest upon $229,581, the amount of the inventory at the time the receiver was appointed, Feby. 23d, 1867, and deducting the present estimated value of the property, $59,275.45, to be returned by the receiver. For use of junction-track at $15,000 per annum from Feby. 23d, 1867, to June 1st, 1867, annual interest added.... 72,255

Due the defendants balance of money received by the former receiver and not expended by him, with interest, gold, reduced to currency @ 112..... 30,520 33

Due the Real and Personal Estate Association for
86 use of depot-grounds from June 1st, 1867, to October 1st, 1859, at $14,400 per annum, gold, annual interest added; gold reduced to currency @ 112.. 46,504 60

Due the same from Oct. 1, 1869, to June 1, 1871, with annual interest..... 18,920

$416,869 39

That from the aggregate sum above named there shall be deducted the sum of 52,400.51, the proceeds of the sale of said scrip, this day paid to said defendants, leaving the sum of $364,468.88 due to them, which last-named sum is to carry interest at 8% per annum from June 1, 1871, to time of payment. That there be paid to the receiver on account of any indebtedness created by him, or advances made by him under the order of this court, such sum as may, at that time, be due him.

That the payments to be paid to the defendants and to the receiver under said decree of August 19, 1869, as above provided, be paid to them, pro rata, in proportion as the amount due them bears to the whole amount paid.

4th. There shall be next paid to the complainants in this cause
87 the sum of $50,515.56, as and for the expenses and compensation of the individual complainants in prosecuting this cause for the benefit of all parties interested.

5th. That the time for the presentation, filing, and proof of the bonds issued by the Galveston, Houston & Henderson Railroad Company be, and is hereby, extended to the 1st day of December, 1871, and that they be presented to Hon. J. C. C. Winch, master in chancery, for the purpose of examining and reporting the same as provided in the opinion of the supreme court given in this case.

That the bonds themselves be deposited in the National Bank of Texas until the further order of this court.

6th. That all the proper costs of the complainants and defendants incurred in this cause to the final decree therein, and all proper costs in carrying this decree into final execution, be taxed by the clerk of this court, and be paid by the receiver out of the funds in his hands and out of the proceeds of sale, ordered herein, as provided in said decree.

(Signed) W. B. WOODS, *Judge.*

88 *Statement of expenses paid and incurred by N. A. Cowdrey, for the use of the bondholders in suit of Cowdrey, &c., v. The Galveston, Houston and Henderson Railroad Company, &c.*

1866.					
Feby.	16.	Cash paid De Plaise, Paris, gold, $75	107		
	28.	Telegram, $5.50; advertising, $13.06	18	56	
June	11.	Cash R. B. Kimball, counsel fees and expenses to Europe	1,049	50	
	28.	" do. do.	1,200	00	
August	20.	" printing, $13.00; copies of West, 18.00	31	00	
Nov.	19.	" Tipton Walker	25	00	
Dec.	15.	" secty. of state, Texas	15	00	
					2,446 06
		Interest on do. from June 1, 1866, to June 1, 1871, 5 years, 8%			978 40
1867.					
Jany.	28.	Telegram, 5.50; personal exp. to Texas, $192.19	197	69	
Feby.	23.	Cash, printing complaint	53	25	
Aug.	3.	" " schedule	21	00	
	19.	" affidavits & telegram	8	20	
	30.	" printing opinion of court	109	00	
Sept.	3.	" R. B. Kimball, counsel fees and expenses to Europe	2,283	19	
Oct.	14.	" Valentine' expenses	423		
Nov.	22.	" Kimball's expenses	2,188		
Oct.	4.	" U. S. commissioner	30	25	
Dec.	7.	" stationery, postage, U. S. commissioner	35	00	
	21.	" Kimball's expenses	117	92	
		" do. do.	200		
					5,666 50
		Interest from July 1, 1867, to July 1, 1871, 4 years, 8%			1,813 28
1868.					
January	18.	Cash, Kimball's expenses to Boston	503	07	
Feby.	1.	" personal " " Galveston	205	50	
April	18.	" notary, $7; printing, $12	19	00	
June	24.	" expenses to Galveston	374	81	
	"	" F. P. James do.	374	81	
Aug.	17.	" printing opinion of court	56	50	
	"	" notary, $8; telegram, 4.57	12	57	
					1,546 26
		Interest on do. May 1, 1868, to May 1, 1871, 3 years, 8%			371 10
		Amount carried forward			12,821 60
89		Amount brot. forward			12,821 60
1869.					
May	18.	Cash, expenses to New Orleans	54	13	

Aug.	16.	"	" Washington ...	32	
			2 years' interest on do.....	14	
					100 13
1870.					
March	15.	"	expenses of F. P. James to Galveston.....	500	
			1 year's interest	40	
					540
			Wm. G. Hale' services, including interest to Oct. 1, 1869	19,616 91	
			Add 1 year's interest.....	156 92	
			Paid Hale since Oct. 1, 1869.....	1,000	
			interest on do.	80	
		"	James Grant	1,000	
			other expenses, say.....	200	
					22,053 83
			Time and services of N. A. Cowdrey from June 1, 1867, to Oct. 1, 1869		15,000 00
					$50,515 56

The above sums have been actually paid out by the complainants, or are now due from them, for the use and benefit of the bondholders named in the bill of complaint.

N. A. COWDREY.

Sworn to before me this 1st day of June, A. D. 1871.

LEVI JONES, *Clerk.*

The complainants secured a judgment of $6,694,776 in this case. They ask an allowance of 1½ per ct. on the amount of the judgment recovered, viz: $100,421.64.

(Endorsements:) Memorandum of expenses incurred by plfts., in Cowdrey, &c., v. G., H. & H. Railroad, &c. Filed 2d June, 1871. Levi Jones, clerk.

90 *Order confirming sale of railroad.—From minutes Dec'r term, Dec'r 15, 1871.*

Circuit court of the United States, eastern district of Texas.

N. A. COWDRY AND OTHERS
against
THE GALVESTON, HOUSTON AND HENDERSON Railroad Company and others. } Dec'r T., 1871.

Order confiring sale of railroad and franchises.

Whereas it appears to this court by return made by the United States marshal for this district, that, pursuant to an order of this court made in the above-entitled cause, at a term of the court held at Galveston in May, A. D. 1871, the said marshal, after giving notice as required by said order and by law, did, on the 1st day of December, A. D. 1871,
91 sell all the franchises and property of the Galveston, Houston and Henderson Railroad Company, one of the defendants in this cause, and also all the property purchased or owned by the receiver in this cause, to F. P. James of the city and State of New York, at the sum of six hundred and seventy-five thousand ($675,000) dollars;

And whereas it appears to the court that at and before said sale the

receiver read a notice notifying all proposed purchasers that he would ask the court to require the purchaser to assume and pay all claims which are made, or may be made, and allowed by the court against the receiver, growing out of the operation of the railroad while in the custody of the court for loss or injury to property or for injury to persons;

And whereas it further appears to the court from the statements of the counsel of both parties that all appeals and cross-appeals taken from the orders or decrees of this court, made at said May term, 1871, in this cause, to the Supreme Court of the United States, have been discon-
92 tinued and withdrawn:

Now, upon consideration of the premises, the court having heard by their counsel or solicitors all parties in this cause desiring to be heard, it is ordered and decreed:

Purchaser required to file bond

1st. That upon said purchaser filing his undertaking in this court in this cause in the sum of fifty thousand dollars, obligating himself and his assigns to pay all claims, which the receiver is not in funds to pay, that may be allowed by the court against the receiver for loss or injury to property or to the person, and upon filing herein the receipt of the parties herein below named, that said sale of said railroad, franchises, and property be, and the same is, in all things approved and confirmed as of the 1st day of December, A. D. 1871.

2nd. That upon said purchaser filing the papers above required, the United States marshal be, and he is hereby, directed to convey the railroad, franchises, property, and premises so sold to the said F. P. James, or to his assigns, by proper deed of conveyance, and to return
93 to said James the sum of sixty-seven thousand five hundred ($67,500) dollars, the amount deposited by him as security for his bid.

3rd. That the said F. P. James, purchaser as aforesaid, be, and he is hereby, directed to pay to the United States marshal his fees, which, by his agreement, were fixed in said order of sale at $1,000; add his disbursements, $96.00, taxed and allowed in the aggregate at $1,096

To the several defendants, the sum allowed them by this court in its order at said May term, which, with interest to Dec. 12, 1871 ..... $380,181 55

To the receiver, the amount due for loans and debts incurred under the orders of this court, with int. to Decr. 12, 1871 ..... $277,052 57

The court finds the amount due to the complainants, under the order of this court, made at said May term, to be, with interest to Dec. 12, 1871, $52,693.35, of which amount the said purchaser is hereby directed to pay to

Complainants' paid partly.

them the sum of 16,669 88

Total to be paid by purchaser $675,000

94 Leaving due to the complainants under said order at said May term the sum of $36,023.47.

Purchaser required to file receipts.

4th. That the said F. P. James, the purchaser as aforesaid of said premises, be, and he is hereby, directed to file in this court before the adjournment of its present term, the receipts of the above-named U. S. marshal, the defendants, the receiver, and the complainants' for the amounts above found to be due them from the purchase-money to be paid by said James.

5. That whenever said James shall have complied with the terms of this order, the receiver is hereby directed to hand over and to transfer to said James, or to his assigns, the possession of the railroad, franchises, and property purchased by him of said United States marshal, which being done, the receiver is hereby discharged from the further custody, possession, and control of said railroad, franchises, and property; but the powers of the receiver, so far as appertain to his accounts, and to the collection of moneys due to him, and to the settlement of
95 claims against him, be, and the same are, continued. He is hereby directed to settle and liquidate the same as soon as practicable.

T. H. DUVAL,
U. S. Judge.

GALVESTON, *Decr.* 15, 1871.

Final report of N. A. Cowdrey, receiver.—Filed Feby. 25, 1874.

N. A. Cowdrey, receiver, in acct. with the G., H. & H. Railroad, placed in his possession by the U. S. circuit court.

1874.	DR.		
Feb. 24.	To amt. rec'd from or on acct. of T. Walker, receiver		$42,043 82
	" gross earnings of R. R.	$1,266,984 82	
1872.			
Aug. 28.	" P. O. Dept. penalties remitted	872 77	
1873.			
May 23.	Govt. transportation of stores	1,228 81	
			1,269,686 40
	From sale of land-scrip		31,966 71
	" F. P. James, purchaser of R. R		277,134 03
	" Premiums on gold sold		1,511 91
	" amt. due to other R. Rs., viz:		
	Texas Central	$7,505 46	
	G., H. & H. of 1871	2,174 08	
			9,679 54
			$1,631,422 41

96 1874.	CR.		
Feb. 24.	By amt. pd. on acct. liabilities of T. Walker, receiver		$115,270 40
	" advances made for Walker, late receiver		500
	" cash pd. by order of court		35,709 57
	pay-roll of employees		494,437 62
	miscellaneous operating expenses to date of last report	350,279 90	
	pd. since last report	3,223 51	
			353,503 41
	supplies purchased		335,038 35
	furniture "		3,527 77
	new side-tracts built		33,412 16
	equipment purchased		216,519 32
	tools & machinery		10,705 37
	new buildings		10,355 23
	uncollected advanced charges	$8,723 09	
	" earnings	6,739 05	
			15,462 14
	cash in hand	$6,725 14	
	international R. R. Co.	255 93	
			6,981 07
			1,631,422 41

The receiver respectfully reports that, in his judgment, the items uncollected, advanced charges, and uncollected earnings, $15,462.14, are of little of no value; he does not know how he can realize anything out of them. That he has cash in his hands to the amount of $6,981.07;
97 that he owes connecting R. Rs., growing out of the operation of this road, the sum of $9,679.54, viz: The Texas Central, $7,505.46; the G., H. & H. R. R. of 1871, 2,174.08.

The receiver respectfully asks the advice of the court as to how he shall apply and what distribution he shall make of the money in his hands, viz, 6,981.07. He begs to call the attention of the court to the various orders heretofore made by the court in that respect, enumerating the principal orders made in their priority of time:

1st. To pay operating expenses and sums due to connecting railroads.

2d. Decree of Aug. 19, 1869, affirmed by the Supreme Court of the United States, that the complainants should be paid their cost in prosecuting this case. Under this decree there is due to the complainant the sum of $36,023.47, with interest from December 15, 1871, and the further sum of $5,000 subsequently taxed against them in favor of J. C. Winch, master of this court, with interest from Dec. 22d, 1871, unless the same should be reversed by the Supreme Court of the United States, to which an appeal has been or is to be taken.

3d. In addition to the above the court has at various times since Feb'y 20, 1872, and this date made various orders, that the receiver
98 should pay various persons various sums for lost baggage or freight, amounting in the aggregate to about the sum of $6,000, all of which is shown in detail by the records of this court. Upon being advised by the court how and to whom he shall pay the $6,981.07, now in his hands, and upon his paying over the same as advised by the court, the receiver respectfully asks to be discharged from the office of receiver, and that his accounts now and heretofore filed in this court be approved; and he, as in duty bound, will ever pray.

Feb'y 24, 1874.

N. A. COWDREY,
Receiver.

(Endorsed:) Chancery No. 1. N. A. Cowdrey & others v. G. H. & H. R. R. and others. Receiver's report and petition to be discharged, dated Feb'y 24, 1874. Filed Feb'y 25th, 1874. C. Dart, clk.

99 *Bond or undertaking of F. P. James, to pay any future claim which may be allowed against the receiver.—Filed Dec. 15th, 1871.*

Circuit court of the United States, eastern district of Texas, December term, 1871.

N. A. COWDREY AND OTHERS
against
THE GALVESTON, HOUSTON AND HENDERSON Railroad Company and others.

Undertaking of purchaser to pay any future claims which may be allowed against the receiver.

Whereas in the above-entitled cause the premises in the possession of N. A. Cowdrey, the receiver, have been sold, and the sale thereof confirmed by this court; and whereas the railroad has been in possession

of this court since February 27th, 1867, to this date, and it is possible that there may be still outstanding and unliquidated claims against the receiver, growing out of the operation of the railroad, such as for lost or damaged freight or for injuries to persons or property, or for expenses allowed by the court:

Now, therefore, I, Fred. P. James, of the city and State of New York, the purchaser of said premises, do hereby, in consideration of the premises, obligate myself, my heirs, successors, and assigns, in the penal sum of fifty thousand dollars to pay any and all claims against said
100 receiver, which this court shall consider him liable to pay in excess of the funds and property still in the hands of the receiver.

In witness whereof I have hereto set my hand and seal, at the city of Galveston, this day of December, 1871.

F. P. JAMES.

In presence of—
JAMES F. MAGUIRE.

(Endorsements:) Circuit court of the United States, eastern district of Texas. N. A. Cowdrey & others against The Galveston, Houston & Henderson Railroad Company & others. Undertaking of purchaser to pay any future claim which may be allowed against the receiver. Filed Dec. 15th, 1871. Levi Jones, clk.

101 *Receipt for money paid by purchaser.—Filed December 15th*, 1871.

Circuit court of the United States, eastern district of Texas.

N. A. COWDREY AND OTHERS
against
THE GALVESTON, HOUSTON AND HENDERSON Railroad and others. } December term, 1871.

Received from Mr. F. P. James, the purchaser of the premises sold by the U. S. marshal in this cause, the sum set opposite to our respective names, the same being the amount ordered by the court to be paid to us respectively from the proceeds of said sale, viz:

Wm. E. Parker, U. S. marshal	$1,096 00
T. W. Peirce, president of Galveston and Houston Junction Company & of Galveston, Houston & Henderson Railroad Company, (successor comp'y,) & agent for Real & Personal Estate Association, defendants	380,181 55
N. A. Cowdrey, receiver	277,052 57
N. A. Cowdrey, for complainants	16,669 88
	$675,000 00

(Endorsements:) Circuit court of the United States, eastern
102 district of Texas. N. A. Cowdrey and others against The Galveston, Houston and Henderson Railroad and others. Receipt for money paid by purchaser. Filed December 15th, 1871. Levi Jones, clerk.

103 *Application of receiver for discharge.—Filed Feby.* 27, 1874.

Circuit court of the United States, eastern district of Texas.

N. A. COWDREY AND OTHERS, COMPLTS.,
vs.
THE GALVESTON, HOUSTON AND HENDERSON Railroad Company and others, defts.

The receiver in this cause, N. A. Cowdrey, respectfully represents that his monthly accounts have been regularly filed, as required by the order of this court, and have not been objected to or opposed within the time limited by the rules governing the practice in this court.

Wherefore he prays that he may be discharged from his office of receiver, with such directions as the court may give as to the deposit or appropriations of the money reported by him to be still in his hands.

WM. G. HALE,
For said Receiver.

(Endorsed:) Ch. No. 1. N. A. Cowdrey and others v. G., H. &
104 H. R. R. Co. and others. Application of receiver for discharge, etc. Filed Feby. 27, 1874. C. Dart, clk.

Exceptions of Jno. C. Bullitt to approval of receiver's a/cs, &c.—Filed Feby. 28, 1874.

In chancery, in the circuit court for the eastern dist. of Texas.

N. A. COWDREY ET AL.
vs.
THE GALVESTON, HOUSTON & HENDERSON Railroad. } No.

Now comes John C. Bullitt, intervenor in the above cause, by his solicitors, and excepts to the allowance of the final account and report of N. A. Cowdrey, and to his application for discharge, for this, that said Bullitt is a creditor, and entitled to five thousand dollars, with interest thereon, as appears by master's report on file in this cause; that he is entitled to be paid out of the said trust-fund, which has been and is being administered by the said receiver. He objects to the allowance of the said account & application because the same is not verified
105 and accompanied by any vouchers showing receipts and disbursements of said receiver, and he asks that the same be referred to a master in chancery, to ascertain the correctness thereof, and that the same be referred to E. T. Austin, as master in chancery.

WILLIE & CLEVELAND,
Solicitors for Bullitt.

(Endorsed:) Ch. 1. N. A. Cowdrey & others v. G. H. & H. R. R. Co. & others. Exceptions of John C. Bullitt, intervenor, to approval of receiver's accounts and to receiver's dischg. Filed Feby. 28, 1874. C. Dart, clk.

Order referring final a/c of receiver to Master E. T. Austin.—From minutes Decr. term, 1873, *Feby.* 28, 1874.

N. A. COWDREY AND OTHERS
vs.
GALVESTON, HOUSTON & HENDERSON Railroad Company and others.

It is ordered that the final account-current of the receiver, Cow-

106 drey, be referred to Master Austin for examination, and that he report upon the same in extenso as to the several orders and decrees heretofore had herein, and whatever may be deemed necessary for the court to be acquainted with in acting upon the request of the receiver to be discharged herein, and that Mr. Austin be authorized to call to his assistance any person or persons that he may deem necessary, it being understood that the master, Austin, is not required to restate or make any second report herein.

(Signed) AMOS MORRILL, *Judge.*

107 *Report of Edward T. Austin, special master.—Filed May 26th* 1874.

Report of Special Master Edward T. Austin, to whom was referred, by order made in chancery No. 1, entitled between N. A. Cowdrey et al, complainants, and The G., H. & H. R. Rd. et al., defendants, dated February 28th, 1874, "the final account of N. A. Cowdrey as receiver, for examination, and that he report in extenso as to the several orders and decrees heretofore had therein, and whatever may be deemed necessary for the court to be acquainted with in acting upon the request of the receiver to be discharged herein."

Under this order the master called to his assistance Mr. F. F. L'Estrange, accountant, and caused a trial balance to be made of the books of the receiver, a statement of the receiver's account of all the operations and transactions of the G., H. & H. R. Rd. from October 1st, 1869, to April 30th, 1874, and a cash statement, being an exhibit of cash received and disbursed by the receiver during the same period, as shown by his books and vouchers, which are herewith submitted,

108 marked "A," "B," & "C."

From a careful examination of the books, it appears, as shown by Exhibit B, that the said receiver received, during his term of service, from the date of his appointment up to April 30th, 1874, the sum of..... $3,149,269 33

And disbursed during same period..... 3,142,805 34

Leaving balance, as per his accounts & vouchers... $6,463 99

After the general examination of the books and the making of the above statements therefrom, the master with his assistant carefully inspected the charges for disbursements, examining each voucher of the several months; and during the progress of this examination of the vouchers he ascertained that some few errors had been made in charging the amounts from the vouchers in the books; but these discrepancies were very small and have been rectified.

There were also found sundry disbursements for purposes not considered by the master as proper expenditures by an officer of the court in charge of a fund, viz, for contesting a subsidy proposition made to the city of Galveston by the Galveston, Harrisburg and San Antonio

109 Railway Company. The expenditures by the receiver for like purposes, the master suspends for the judgment of the court.

The master finds the books and accounts of the receiver have been remarkab y well kept, the entries being vouched for in proper manner; and in such a voluminous set of accounts the paucity of errors elicited his commendation.

One error of ($500.00,) five hundred dollars, apparently, has arisen

from charging the item in the cash-book from the figures on the outside of the voucher, (No. 290, Dec'r 20, 1871,) and would not probably be discovered until a balancing of the cash was had by counting, or by such an examination as was made by the master and his assistant.

The master finds an item of ($500.00) five hundred dollars claimed by the receiver as a credit on his account as cash paid to J. C. C. Winch, special master, to register the bonds, which the master disallows, and charges back to the receiver for the reason that the judgment of the court allowing the sum of ($5,000.00) five thousand dollars to J.
110 C. C. Winch for that service, directs that amount to be taxed against the complainants as their costs; and this amount is therefore added by the master to the balance of cash to be accounted for by the receiver, making the amount to be accounted for by him $6,963.99.

The aggregate of the amounts suspended by the master, viz, $14,029.15 if the ruling of the master is sustained by the court, added to the ascertained balance in the hands of the receiver, will make the amount of said balance $20,993.14.

The further liabilities of the receiver, N. A. Cowdrey, as ascertained from the court records, being claims referred and reported on, as is more plainly shown in detailed account herewith marked "D," being for merchandise lost, and the said reports confirmed by the court, amount, with interest to June 1, '74, to $7,575.61.

In addition to the above there are some claims also for lost merchandise, which have been referred to the master and reported on by him to the court, but on which reports the court has not yet taken any action, amounting in the aggregate, as allowed by the master, to $555.59
111 and are set out in the statement attached to this report, marked "D."

The intervention claim of John C. Bullitt, (No. 71,) referred to the master at a former term of the court, for ($5,000.00) five thousand dollars, fee for services as attorney for the trustees of the first and second mortgage bondholders, and reported by the master to be paid by the receiver out of such funds in his hands as belonged to the holders of such mortgage bonds, has not been acted on by the court and no exceptions to the master's report filed, and the master now reports the fact to the court for its judgment, whether the receiver must provide for the same prior to his discharge.

The master refers the court to the statements herewith filed, marked "A," "B," "C," & "D," as part of this report, and returns to the court the vouchers and books of the receiver, N. A. Cowdrey, from which the said statements were deduced.

The master recommends for allowance the charge made by Mr. F. L'Estrange for his service while in the employ of the master, viz, the sum of $350.00.

112 He says that the work has been laborious and he believes that it has been thorough, and that the amount charged is moderate, reasonable, and proper.

He prays the court to make him, the said master, such allowance for his services as to it may seem good.

The report has been delayed from the fact that the work has been great, and with other duties to perform, it could not sooner be finished.

Respectfully,

EDWARD T. AUSTIN,
Special Master.

(Endorsements:) Ch. No. 1. N. A. Cowdrey et al. vs. G., H. & H. R. Rd. et al. Report of Edward T. Austin, special master, with Exhibits A, B, C, & D. Filed May 26, 1874. C. Dart, clerk.

113

A.

[From the books of N. A. Cowdrey, receiver of the Galveston, Houston & Henderson R. Rd.]

Trial balance.—April 30th, 1874.

Ledger page.	Accounts.	Debits.		Credits.	
		Coin.	Currency.	Coin.	Currency.
1	Income			681 20	205, 253 01
22	N. Y. office of the receiver		5, 947 95		
23	F. P. James, receiv' purchaser				277, 134 03
24	G., H. & H. R. Rd. Comp'y of 1871			1, 187 40	986 68
71	Advanced charges				397 40
88	Galveston Station, (⅝ charges)	5, 294 43	382 30		
98	Houston do. do.	541 60	2, 501 76		
118	Galveston do. (⅝ freight)		3, 122 31		
144	Houston do. do.		3, 136 31		
239	Sale of land-scrip				31, 966 71
241	Gold sold	19, 539 59			19, 539 59
	Gold bought		24, 212 30	24, 212 30	
246	Premium & discount				2, 346 01
250	Bills receivable		93		
256	H., & T. C. R'y Comp'y				7, 050 96
262	B. B. B. & C. R'y Comp'y		161 30		
266	G., H. & S. A. R'y Comp'y				57 10
270	Sundry creditors, (⅝ T. Walker, rec'r)	492 28	72, 734 30		
277	General supplies		121, 075 15		
288	G. & H. Junction R. Rd. Comp'y		275 70		
326	Pay-rolls, (unpaid)				160 74
339	Mrs. Tipton Walker		500 00		
341	Equipment purchased & built		216, 519 32		
343	New side-track		33, 412 16		
344	U. S. Gov't, (for transp'tn of troops)		42 50		
352	New buildings		8, 898 97		
354	Chancery No. 1	210	35, 779 57		
356	Furniture		3, 527 77		
360	Tools & machinery		10, 705 37		
362	Windmills & pumps		1, 456 26		
502	J. C. C. Winch		500 00		
		26, 080 90	544, 892 23	26, 080 90	544, 892 23

Galveston, Texas, April 30th, 1874.

F. T. L'ESTRANGE,
Accountant.

Approved.

EDWARD T. AUSTIN,
Special Master.

(Endorsements:) Exhibit A to report of Edward T. Austin, special master. Filed May 26, 1874. C. Dart, clerk.

B.—CASH STATEMENT.

A statement of total amounts of cash received and disbursed each month by the receiver of the G., H. & H. R. R'd, and showing balances at the end of each month, from October 1st, 1869, to April 30th, 1874.

	Cash received.		Cash disbursed.		CASH BALANCES.			
					Debits.		Credits.	
	Coin.	Currency.	Coin.	Currency.	Coin.	Currency.	Coin.	Currency.
October 1869								
November "	19,074 48	54,507 92	18,700 48	38,270 61	374	16,237 31		
December "	35,483 67	82,599 70	28,105 38	82,805 46	7,752 29	16,031 55		
January "	44,124 51	83,590 23	38,877 40	83,340 94	12,999 40	16,280 80		
February 1870	44,973 28	78,769 20	48,179 84	76,131 54	9,792 84	18,918 50		
March "	44,147 70	98,745 67	52,038 74	87,513 91	6,901 80	30,150 26		
April "	54,219 12	71,685 03	46,149 23	80 098 43	14,971 69	21,736 86		
May "	30,623 24	81,893 29	36,388 82	95,086 34	9,206 11	8,543 81		
June "	20,497 75	62,771 29	24,877 40	57,552 05	4,826 46	13 763 05		
July "	8,503 55	45,855 39	10,499 01	62,700 55	2,831			3,082 11
August "	8,161 95	48,195 11	9,114 80	38,516 58	1,878 15	6,596 42		
September "	5,062 15	38,576 86	3,776 95	36,628 88	3,163 35	8,544 40		
October "	9,125 90	58,006 63	10,580 93	41,611 92	1,708 32	24,931 11		
November "	10,446 17	37,611 53	8,520 34	88,359 78	3,634 15			25,809 14
December "	41 995 29	75,462 58	38,160 52	75,343 27	7,468 92			25,689 53
January "	59,153	88,963 75	73,570 17	98,743 89			6,948 25	35,469 97
February 1871	84,933 45	99,997 85	76,306 55	120,293 66	1,678 65			55,765 78
March "	62,419 23	73,698 15	63,796 08	89,958 04	301 80			72,025 67
April "	117,607 92	91,997 13	112,588 55	57,732 38	5,321 17			37,760 92
May "	69,787 42	62,989 34	72,471 15	125,277 67	2,637 44			100,049 25
June "	46,210 78	63,747 08	49,024 30	46,956 65			176 08	83,258 82
July "	45,240 52	97,825 08	44,080 08	58,351 93	984 36			43,785 67
August "	24,666 01	47,908 95	24,994 71	137,620 07	665 66			133,496 79
September "	14,563 06	43,747 63	13,032 56	52,635 17	2,186 16			142,384 33
October "	21,284 58	66,345 25	20,226 83	51,327 33	3,243 91			127,366 41
November "	33,905 21	54,7 5 53	31,299 22	181,174 01	5,849 90			253,814 89
December "	35,289	59,823 76	38,057 35	69,543 46	3,081 91			263,534 59
January "	39,054 09	329,105 75	38,728 84	60,720 15	3,407 16	5,851 01		
February 1872	20 75	3,719 84	3,427 66	5,757 96	25	2,312 89		
March "	12 15	99 05		643 40	12 40	1,768 54		
April "		2,924 26		1,329 57	12 40	3,363 23		
May "	2	2,221 84		586 14	14 40	4,998 93		
June "				2,767 96	14 40	2,230 97		
August "		16 29	14 40	5 58		2,241 68		
		4,521 68				6,763 36		

B.—*Cash statement*—Continued.

	Cash received.		Cash disbursed.		CASH BALANCES.			
					Debits.		Credits.	
	Coin.	Currency.	Coin.	Currency.	Coin.	Currency.	Coin.	Currency.
November 1873				235		6, 528 36		
July "				250		6, 278 36		
August "		92 75		9 27		6, 261 84		
October "		671 22				7, 533 06		
November "		12 50				7, 545 56		
February 1874		255 93		1, 057 50		6, 743 99		
March "				280		6, 463 99		
	$1, 035, 588 29	2, 113, 681 04	1, 035, 588 29	2, 107, 217 05		6, 463 99		

Galveston, Texas, April 30th, 1874.

F. T. L'ESTRANGE, *Accountant.*

Approved:

EDWARD T. AUSTIN, *Special Master.*

(Endorsement:) Exhibit B to report of Ed. T. Austin, special master. Filed May 26, 1874. C. Dart, clerk.

115 "C."—*Statement of the account of N. A. Cowdrey, receiver of the Galveston, Houston & Henderson R. R'd, from October 1st, 1869, to April 30th, 1874.*

DEBITS.			CREDITS.		
For earnings		1,269,067 44	By expenses of operations		1,061,535 63
Viz: Freight	950,387 01		Cost of supplies (on hand Nov. 30th, 1871)		127,581 57
Passage	305,004 73		" " equipment, purchased & built		216,519 32
Mail-service	12,322 73		" " side track		33,412 16
Mileage	828 72		" " buildings		8,898 97
Miscellaneous	524 25		" " furniture		3,527 77
			" " tools & machinery		10,705 37
Sale of land-scrip		31,966 71	" " windmill & pump		1,456 26
Do. " old material		6,506 42	" " G. & H. Junction R. R'd, (reprs. &c.)		275 70
Do. " R. R'd, &c., (to F. P. James)		277,134 03			
			Payments by order of U. S. circuit court		35,989 57
Collections of am'nts due to T. Walker, former receiver		42,043 82	Do of am'nts due by T. Walker, former receiver		115,270 40
			Do to Mrs. Tipton Walker		500 00
Premiums & discounts		19,090 95			
Viz: Premium on sale of $41,785.48, coin	10,344 41		Premiums & discounts:		
Do " conversion of coin acs	8,721 64		Viz: Premium on purchase of $16,404.02, coin	2,139 47	
Discount " purchase of N. Y. Exchange, $25,000	25 00		Do. allowed on conversion of coin acs	15,435 09	
			Do. on purchase of N. Y. Exchange $2,225.64	5 58	
			Discount on uncurrent money	3	
			Do. on sale of N. O. Exchange, $1,803.96	4 50	
			Profit & loss:		
			Paid, drayage & wharfage on freight for Int. R. R'd		255 93
Accounts due by the G., H. & H. R. R'd		9,858 85	Accounts due to the G., H. & H. R. R'd		15,187 94
G., H. & H. R. R'd Comp'y of 1871	2,174 48		Galveston station agent	8,802 04	
G., H. & S. A. R'y Comp'y	57 10		Houston do do	6,179 67	
H., & T. C. R. R'd Comp'y	7,069 53		B., B., B. & C. R'y Comp'y	162 23	
Advanced charges	397 40		H. & T. C. R'y Comp'y	1 50	
Pay-rolls	160 74		U. S. Gov. for transportation of troops	42 56	
			Balance		6,963 99
			Paid J. C. C. Winch, cash	500	
			Errors, cash &c.	516 04	
			Cash on hand	5,947 95	
		1,655,668 22			1,655,668 22

E. & O. E.

Galveston, Texas, April 30th, 1874.

F. T. L'ESTRANGE, *Accountant.*

Approved:

EDWARD T. AUSTIN,
Special Master.

(Endorsements:) Exhibit C to report of Edw'd T. Austin, special master. Filed May 26, 1874. C. Dart, clerk.

116 **"D."—*Statement of the account of N. A. Cowdrey, receiver of the Galveston, Houston & Henderson Railroad, as reported by Special Master E. T. Austin, pursuant to an order of reference, dated February 28, 1874.***

DEBITS.			CREDITS.	
For amount of cash in hands of N. A. Cowdrey, receiver, as per his last report on file		6,227 95	By cash paid E. T. Austin, special master, as per receiver's books, subsequent to last report filed by receiver	280
		$6,227 95		
For amount of cash in hands of receiver, as per his statement of ⅜		5,947 95	Balance, cash in hands of receiver, as per his statement of the ⅜	5,947 95
Errors in cash ⅜		516 04		
From Oct. 1st, 1869, to Feb'y 28th, 1870	16 04			$6,227 95
See voucher No. 290, paid Dec'r 20, 1871, to Sherwood & Flournoy, credited to receiver, $1,250, should be $750	500		Balance, cash in hands of N. A. Cowdrey, receiver, to be accounted for by him, as per ruling of E. T. Austin, special master	$6,963 99
Cash paid J. C. C. Winch		500		
Disallowed by master as not in accordance with order of court in reference to this matter.				
		$6,963 99		$6,963 99
For balance, cash in hands of receiver, (as per ruling of master)		6,963 99		
The amounts of cash disbursed, shown by the following designated vouchers, are suspended by the master, subject to the decision of the court, as to whether the fund in charge of the receiver was properly applied, amounting to		14,029 15		
Viz:				
Voucher ⅛ 1660. Paid August 21, 1871, to W. W. Willard	2,280			
"For cash expended for registering & employing men, with a view of defeating the proposition of the Galveston, Harrisburg & San Antonio R. R. for a subsidy from the city of Galveston to aid them in constructing a line of road from Galveston to Houston."				
Voucher ⅛ 1661. Paid August 21, 1871, to W. W. Willard	912			
"For cash expended in defeating proposition of Central Transit R. R. for a subsidy from the county of Galveston to aid them in constructing a line of road from Galveston to Beaumont."				
Voucher ⅛ 113. Paid October 21, 1871, to W. W. Willard	9,372 15			
"For expenditures in opposing the donation of five hundred thousand dollars to the Galveston, Harrisburg & San Antonio R R'd Co. by the city of Galveston, to aid in constructing a road between Houston & Galveston."				
Voucher ⅛ 185. Paid Nov'r 17, 1871, to Sherwood & Flournoy	500			
117 "For retainers fee as attorneys in suit Robt. Colwell vs. The City of Galveston, and others, in district court of Texas."				
Voucher ⅛ 290. Paid Dec'r 20, 1871, Sherwood & Flournoy	750			
"For professional services rendered the receiver in case of Robert Colwell vs. The City of Galveston & others, in defending the franchise of the G. H. & H. R. R'd."				
Voucher ⅛ 95. Paid Oct. 21, 1871, to H. Stuart & Co	115			
"For printing Sherwood & Flournoy's Opinion on Railroad Subsidy" 100				
" paper and binding same" 15				
Voucher ⅛ 4. Paid Jan'y 5th, 1872, to McLemore & Hume	100			
"For professional services rendered the receiver in defending W. W. Dorlan, in the matter of indictment for alleged interference with right of suffrage during the voting on subsidy to San Antonio R. R'd by city of Galveston."				

The master finds and reports the following judgments and audited claims against the receiver of the G., H. & H. R. R'd in the clerk's office.

		Date.	Amount.	Interest to June 1, '74, @ 8 %.		Master's fees.	Witness fees.	Clerk's costs.	Total.	
				Time.	Amount.					
72	W. A. Ellis & Co	Feby. 29, 1872	$1,009 14	2 92	182 08	50 00				
73	Buck & Levy	21, "	118 41	2 100	21 57	10 00				
74	John W. Norris	May 6, "	1,086 80	2 25	179 92	20 00	11 50			
76	Robert Hoffman	Feby. 21, "	52 82	2 100	9 62	10 00				
77	Moody & Jemison	May 6, "	3,157 48	2 25	522 75	200 00				
78	C. M. Pearre	Feby. 15, 1873	84 04	1 105	8 68	10 00				
79	Richard J. Gallway	Aug. 26, 1870	81 67	3 278	24 64	10 00				
80	F. Halff & Co	June 29, 1873	512 75	1 122	54 92	20 00				
82	J. R. Mabley	May 15, 1871	145 25	3 16	35 38	10 00				
83	Kenada & Carter	Feb. 15, 1873	186 30	... ...	...	10 00				
	Interest on $162.50		...	1 105	16 79					
84	J. P. Hair & Co	Jany. 1, 1872	70 90	2 150	13 70	10 00				
			*6,505 56	... ...	*1,070 05					
85	R. M. Collins & Co	May 1, 1874	224 93	... ...	...	10 00	...	...	...	Master's report not acted on by the court.
86	Alford & Veal	May 19, "	180 66	... ...	...	10 00	...	...	...	do. do. do.
75	J. R. White		150	... ...	...	10 00	...	...	...	do. do. do.
			*555 89							
71	John C. Bullitt		5,000	... ...	...	50 00	...	...	...	do. do. do.
81	Allen, Poole & Co., disallowed by master		...	... ...	...	...	...	...	...	do. do. do.
	Total									

*Written in red ink.

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RECAPITULATION.

Balance of cash, as per receiver's last report on file	5,947 95
Errors in cash account	516 04
Item disallowed by master	500
Items suspended by master	14,029 15
Claims reported on by master & sustained by the court	7,575 61
Claims reported on by master, not acted on by the court	555 59
	29,124 34

Claim reported on by master not acted on by the court, (John C. Bullitt's.)
Claim disallowed by master not acted on by the court, (Allen Poole & Co.)

EDWARD T. AUSTIN, *Special Master.*

Endorsements:) Ch. No. N. A. Cowdrey et al. v. G., H. & H. R. R'd et al. Exhibit D to report of Edwd. T. Austin, special master. Filed May 26, 1874. C. Dant, clerk.

119 *Vouchers suspended and charged back by E. T. Austin, special master, May 26th, 1874.*

No. 185. Paid November 17th, 1871, to Sherwood & Flournoy.

N. A. Cowdrey, receiver Galveston, Houston & Henderson R. R., to Messrs. Sherwood & Flournoy, Dr.

1871.
Nov'r. To retainer's fee as attorneys in suit of Robert Colwell vs. The City of Galveston and others, in district court, Texas..... $500 00

Correct. Approved.

ROBERT COLWELL, *Supt.*

$500.00.] GALVESTON, *Nov. 17th*, 1871.

Received of N. A. Cowdrey, receiver of the Galveston, Houston and Henderson Railroad, the sum of five hundred dollars, in full of the above account.

SHERWOOD & FLOURNOY,
By FLOURNOY & SHERWOOD,
Survivors, Attys. at Law.

(Endorsed:) Filed May 26th, 1874. C. Dart, clk.

120 No. 1661. Paid August 21st, 1871, to W. W. Willard.

N. A. Cowdrey, receiver Galveston, Houston and Henderson R. R., to W. W. Willard, Dr.

1871.

Amount.

August 16. To cash expended in defeating proposition of Central Transit R. R. for a subsidy from the county of Galveston to aid them in constructing a line of road from Galveston to Beaumont—done by order of the receiver..... $912 00

Correct. Approved.

ROBERT COLWELL, *Supt.*

$912.] GALVESTON, *Aug.* 21, 187'.

Received of N. A. Cowdrey, receiver of the Galveston, Houston and Henderson Railroad, the sum of nine hundred and twelve dollars, in full for the above account.

(Duplicate.) W. W. WILLARD.

(Endorsed:) Filed May 26th, 1874. C. Dart, clerk.

121 No. 1660. Paid August 21, 1871, to W. W. Willard.

N. A. Cowdrey, receiver Galveston, Houston & Henderson R. R., to W. W. Willard, Dr.

1871.

		Amount.
July 16.	To cash expended for registering and employing men, with a view of defeating the proposition of the Galveston, Harrisburg and San Antonio R. R. for a subsidy from the city of Galveston, to aid them in constructing a line of road from Galveston to Houston—done by order of the receiver...	$2,280 00

Correct. Approved.

ROBT. COLWELL, *Supt.*

$2,280.] GALVESTON, *Aug.* 21, 1871.

Received of N. A. Cowdrey, receiver of the Galveston, Houston & Henderson Railroad, the sum of twenty-two hundred & eighty dollars, in full of the above account.

(Duplicate.) W. W. WILLARD.

(Endorsed:) Filed May 26th, 1874. C. Dart, clerk.

122 No. 113. Paid Oct. 21, 1871, to W. W. Willard.

N. A. Cowdrey, receiver of the Galveston, Houston and Henderson R. R., to W. W. Willard, Dr.

1871.

		Amount.
Oct. 30.	To expenditures in opposing the donation of five hundred thousand dollars to the Galveston, Harrisburg & San Antonio Railroad Co. by the city of Galveston, to aid in constructing a road between Houston & Galveston—done by order of receiver..	$9,372 15

Correct. Approved.

ROBERT COLWELL, *Supt.*

$9,372.15.] GALVESTON, , 187 .

Received of N. A. Cowdrey, receiver of the Galveston, Houston and Henderson Railroad, the sum of ninety-three hundred seventy-two $\frac{15}{100}$ dollars, in full for the above account.

W. W. WILLARD.

(Endorsed:) Filed May 26th, 1874. C. Dart, clk.

123 No. 290. Paid Dec'r 20, 1871, to Sherwood & Flournoy.

N. A. Cowdrey, receiver Galveston, Houston & Henderson R. R., to Sherwood & Flournoy, attorneys, Dr.

		Amount.
1871.		
Dec. 20.	For professional services rendered the receiver in case of Robert Colwell vs. The City of Galveston, & others, in defending the franchise of the G., H. & H. R. R.	1,250 00
	Less amt. paid as retainer, Nov. 17, '71.	500 00
		750 00

Correct. Approved.

ROBERT COLWELL, *Supt.*

$750.00.] GALVESTON, *Decr.* 20, 1871.

Received of N. A. Cowdrey, receiver of the Galveston, Houston and Henderson Railroad, the sum of seven hundred and fifty dollars in full for the above account.

SHERWOOD & FLOURNOY,
In liquidation.
Pr. GEO. FLOURNOY.

(Endorsed:) Filed May 26th, 1874. C. Dart, clerk.

124 No. 95. Paid October 21st, 1871, to Civilian Office.

N. A. Cowdrey, receiver Galveston, Houston & Henderson R. R, to Civilian Office, Dr.

		Amount.
1871.		
Oct. 2,	For printing Sherwood & Flournoy's opinion on railroad subsidy	100 00
	Paper and binding same	15 00
		$115 00

Correct. Approved.

Supt.

$115.00.] GALVESTON, *Oct.* 21*st*, 1871.

Received of N. A. Cowdrey, receiver of the Galveston, Houston and Henderson Railroad, the sum of one hundred and fifteen $\frac{00}{100}$ dollars, in full for the above account.

(Duplicate.) H. STUART & CO., *Proprietors.*

(Endorsed:) Filed May 26th, 1874. C. Dart, clerk.

125. No. 4. Paid Jan'y 5, 1872, to McLemore & Hume.

N. A. Cowdrey, receiver Galveston, Houston & Henderson R. R., to McLemore & Hume, attys., Dr.

		Amount.
1872.		
Jany. 5.	For profes'l services rendered the receiver in defending W. W. Dorlan, in the matter of indictment for alleged interference with right of suffrage during the voting on subsidy to San Antonio R. R. by city of Galveston,	100 00

Correct. Approved.

ROBERT COLWELL, *Supt.*

$100.] GALVESTON, *Jany.* 5, 1872.

Received of N. A. Cowdrey, receiver of the Galveston, Houston and Henderson Railroad, the sum of one hundred dollars, in full for the above account.

McLEMORE & HUME.

(Endorsed:) Filed May 26, 1874. C. Dart, clk.

126 *Note of receipt of master's rept. on receiver's acs. From rule and order book May 26, 1874.*

N. A. COWDREY & OTHERS
v.
GALVESTON, HOUSTON & HENDERSON RAILroad Company & others. } Ch. 1.

This day came the special master, Edward T. Austin, to whom it was referred by the order of this court to examine the accounts of N. A. Cowdrey, receiver in this cause, and to make his report thereon to the court, as in the said order specified, and files herein his report upon the said matters, referred to him, together with exhibits marked "A," "B," "C," & "D," accompanying the same.

Galveston, May 26, 1874.

Attest:

C. DART,
Clerk U. S. Circt. Court E. D. T., G.

Reply of receiver to master's rept suspending certain items.—Filed May 27, 1874.

Circuit court of the United States, eastern district of Texas.

N. A. COWDREY AND OTHERS
v.
THE GALVESTON, HOUSTON & HENDERSON Railroad Company and others. } May 26th, 1874.

127 Suggestions made by receiver in relation to $14,029.15 suspended in his acct. by special master.

The special master appointed at the last term of this court, to audit and report upon the accounts of the receiver in this case, having filed his report, in which he, the master, suspends his judgment upon the allowance of a credit to the receiver of $14,029.15, for expenses incurred by the receiver in contesting two proposed subsidies to be given by the city or county of Galveston of $500,000 to aid in building a railroad from Galveston to Harrisburg, or Houston, paral'el with the railroad, placed in the receiver's hands by the court. The receiver respectfully shows to the court that, in August, 1871, the time when said expenses were incurred, there was no U. S. circuit court in session or held in this district. At that time the office of district judge in this district was vacant, and no district or circuit judge or associate justice of the Supreme Court of the United States who had jurisdiction, whose advice or instruction could be obtained.

128 The matter was sprung upon the receiver suddenly, the meeting of voters on the subject was called on a short notice—the receiver thinks thirty days—to be held in the month of August, in this climate a dangerous month for visiting Galveston. The receiver did not consider it prudent as regards his health to come personally to Galveston at that time of the year. The receiver was obliged by the sudden necessities of the case to act upon his own judgment without the official advice or instructions of a court. He informally applied to the hon. associate justice of the Supreme Court of the United States who appointed h m to the office for advice. The associate justice would not act officially without notice to parties in the suit—the question would

be decided by the voters before notice could be given. He, the associate justice, informally and verbally said to the receiver that it was the receiver's duty to protect and defend the franchises placed in his possession as well as that of all other property placed in his possession by the
129 court, and that he would consider him liable upon his official bond if he did not do so. Whereupon the receiver, in the exercise of his best judgment, gave instructions to his agents in Galveston, whereby they incurred the expense of $14,029.15, suspended by the master. The receiver is informed and believes that every dollar of said $14,029.15 was expended in good faith to accomplish the object sought, viz, the defence and protection of the property placed in his hands by the court, by defeating a large appropriation to aid in building a parallel railroad.

The receiver's efforts were successful, in preventing the proposed construction of said paral'el road by three different companies, viz: The Galveston, Harrisburg & San Antonio Railroad Company, The Central Transit R. R. Co., The Houston & Texas Central R. R. Co. The proposed paral'el railroad has not been built, and the property in the hands of the receiver was prevented from being largely impaired in value, by the non-building of said roads. Wherefore the receiver respectfully submits to the court that he should be allowed a credit for said ex-
130 penses of the amount suspended by the master, viz, the sum of $14,029.15.

All of which the receiver respectfully submits.

Galveston, May 26, 1874.

N. A. COWDREY,
Receiver.

Sworn to before me the day and year above named.

C. DART,
Clerk U. S. Circt. Court, E. D. T., G.

(Endorsed:) Chancery No. 1. N. A. Cowdrey and others v. Galveston, Houston & Henderson R. R. Co. and others. Reply of receiver to suggestions of master suspending $14,029.15 of his acct. Filed May 27, '74. C. Dart, clk.

131 *Leave to W. A. Ellis & Co. to file petition in this cause.—From the minutes, Decr. term, Decr. 12th,* 1871.

N. A. COWDREY & OTHERS
vs.
GALVESTON, HOUSTON & HENDERSON RAILROAD Company & others. } Ch. No. 1.

On motion of Walter Gresham, attorney for W. A. Eilis & Co., he has leave on behalf of said firm to file a petition in this cause against the receiver, upon a claim alleged to be due said firm by said railroad company through the receiver for lost freight.

Petition of W. A. Ellis & Co.—Filed December 12th, 1871.

In the circuit court of the United States for the eastern district of Texas.

IN THE MATTER OF N. A. COWDREY ET AL.,
vs.
THE GALVESTON, HOUSTON & HENDERSON Railroad Company et al. } In chancery.

To the honorable judges of said court:

Your petitioners, Wm. A. Ellis and Winter Walker, who were
132 heretofore trading and doing business in the city of Galveston

under the firm name and style of W. A. Ellis & Co., would respectfully show unto your honors, that N. A. Cowdrey was and is acting, under the appointment of this honorable court, as receiver of the Galveston, Houston & Henderson Railroad Company, and that said railroad, while under the management and control of said receiver, received at Houston from the Houston & Texas Central Railroad Company, at various times between the 4th day of November, 1870, and the 26th day of February, 1871, a large quantity of beef-hides belonging to your petitioners; the items of which and the days on which they were received will more fully and at large appear from a statement made by R. H. Williams, agent of said railroad, hereto attached and marked "Exhibit A," and to which reference is hereby made.

Your petitioners further state that the agents in charge of said railroad received said hides as common carriers and undertook and promised to deliver them to your petitioners at Galveston, they to pay
133 freight upon their delivery.

Although the said railroad received said hides as aforesaid, yet the parties in charge thereof, although often requested, have hitherto failed and refused and still do fail and refuse to deliver to your petitioners four bales of dry hides, delivered as aforesaid, or to pay to your petitioners their reasonable value, which they allege was eleven hundred & fifty dollars, ($1,150.00.)

Wherefore your petitioners pray that an order from this court may issue commanding the receiver now in charge of said railroad to pay unto your petitioners the value of said four bales of dry hides as above stated, and that this honorable court will grant such other and further relief in the premises as may seem in accordance with law and good conscience; and your petitioners will ever pray, &c.

GRESHAM & MANN,
Attys. for Petitioners.

EXHIBIT A.

134 *Shipment of hides from Burton to W. A. Ellis & Co., Galveston.*

Date.	W. B.	Car.	B. hides.	B'd'ls G. H.	Loose dry H.	Station.	HOUSTON TO GALVESTON. W. B.	Car.	Date.	B'd'l's skins.
1870.										
Nov. 19	77	C. B. 193	12	9	....	Burton ..	51	C. B. 193	Nov. 19	1 b'd'le skins.
" 28	132	" 328	5	....	....	"	82	G. B. 9	" 29	
Dec. 9	54	" 145	4	....	....	"	36	C. B. 145	Dec. 9	
" 13	87	" 341	3	....	....	"	53	" 341	" 13	
" 26	153	" 338	5	....	....	"	85	" 338	" 26	
1871.										
Jan'y 9	48	" 176	5	....	....	"	31	" 176	Jan. 9	
" 13	82	" 182	3	....	....	"	59	" 182	" 13	1 b'd'le skins.
" 11	66	" 245	10	....	70	"	45	" 245	" 11	
" 30	184	" 187	10	....	....	"	119	" 187	" 30	
Feb'y 9	56	G. B. 185	9	....	....	"	38	G. B. 185	Feb. 9	
" 9	56	" 142	2	....	....	"	38	" 142	" 9	
" 11	69	C. B. 365	3	....	....	"	51	C. B. 364	" 13	
" 17	110	" 80	5	....	....	"	70	" 80	" 17	
" 18	122	" 449	6	....	....	"	78	" 449	" 18	
" "	122	G. B. 173	8	....	....	"	78	G. B. 173	" 18	
Total	.....	.....	90	9	70	.....	.....	.....	.....	2 b'd'les skins.

The packages of hides as specified in above statement received from Houston & T. C. R'w'y Co. at dates given.

R. H. WILLIAMS,
Agt. G., H. & H. R. R.
McK.

135 *Shipment of hides from Kosse, Calvert, and Navasota to W. A. Ellis & Co., Galveston.*

Date.	W. B.	Car.	B. hides.	B'd'l's G. H.	Station.	HOUSTON TO GALVESTON. W. B.	Car.	Date.	
		From 1 3....	161	35					
Feb'y 11	74	G. B. 5....	2	.....	Kosse.	47	C. B. 5	Feb. 11	1 b'd'le skins.
" 14	89	" 20....	4	.....	"	56	" 20	14	
" 17	111	" 185....	4	.....	"	71	" 185	18	
" 22	144	" 175....	5	10	"	92	" 175	22	
" 25	171	C. B. 393....	7	.....	"	111	C. B. 393	27	
" "	171	G. B. 22....	5	.....	"	111	G. B. 22	27	
Total..			188	45	"				1 b'd'le skins.
				Loose hides.					
1870. Dec. 17	120	G. B. 27....	5	48 10 Bl.	Calvert.	*89	G. B. 140	Dec. 27	* Bales badly broken.
				G. R. hides.					
1870. Dec. 8	46	C. B. 132....	5	17	Navasota.	38	G. B. 119	Dec. 9	
1871. Jan'y 17	101	" 94....	.....	7	"	71	C. B. 94	Jan'y 17	
" 25	157	C. B. 31....	1	.....	"	106½	G. B. 31	" 26	
" 31	190	C. B. 233....	1	.....	"	124	C. B. 233	" 31	
Total..	.....	.....	7	24	"				

The packages of hides as specified on sheets 1, 2, 3, & 4, were rec'd from the H. & T. C. R'w'y Co. at dates as given.

R. H. WILLIAMS,
Agt. G., H. & H. R. R.
McK.

136 *Shipment of hides from Kosse to W. A. Ellis & C., Galveston.*

Date.	W. B.	Car.	B'f hides.	B'd'l's hides.	Station.	HOUSTON TO GALVESTON. W. B.	Car.	Date.	
1870.		From 1 2.....	85						
Dec. 27	157	G. B. 28.....	2	17	Kosse.	89	G. B. 28	Dec. 27	
" 30	185	" 135.....	3	.....	"	104	C. B. 135	" 31	
1871.					"				
Jan'y 6	32	C. B. 18.....	4	.....	"	21	C. B. 18	Jan. 6	
" "	37	G. B. 132.....	3	.....	"	23	G. B. 132	" 7	
" "	37	C. B. 433.....	1	.....	"	23	C. B. 433	" 7	
" "	37	" 205.....	5	.....	"	23	" 205	" 7	
" "	37	G. B. 121.....	1	.....	"	23	G. B. 121	" 7	
" 12	78	" 150.....	6	.....	"	56	" 150	" 12	
" "	78	C. B. 75.....	2	.....	"	56	C. B. 75	" 12	
" "	78	" 204.....	1	.....	"	56	" 204	" 12	
" 18	108	" 38.....	3	.....	"	77	" 38	" 18	
" 21	129	G. B. 16.....	7	4	"	89	C. B. 16	" 21	1 b'd'le skins.
Feb'y 2	10	C. B. 30.....	5	.....	"	10	C. B. 30	Feb'y 3	
" 4	30	" 341.....	6	.....	"	20	" 341	" 4	
" "	30	" 15.....	5	.....	"	20	" 15	" 4	
" 9	61	" 240.....	8	7	"	41	" 240	" 10	
" "	61	" 238.....	8	7	"	41	" 238	" 10	
" 11	72	" 393.....	5	.....	"	46	" 393	" 11	
" "	74	G. B. 24.....	1	.....	"	47	G. B. 24	" 11	
		F'r'd to 1 4..	161	35					1 b'd'le skins.

137 *Shipment of hides from Kosse to W. A. Ellis & Co., Galveston.*

Date.	W. B.	Car.	B'f hides.	B'dles Dr. H.	Station.	Houston to Galveston.		
						W. B.	Car.	Date.
1870.								
Nov. 17	65	G. B. 111	7	.....	Kosse	43	G. B. 111	Nov. 17
" 18	72	C. B. 76	6	.....	"	48	C. B. 74	" 19
" 19	81	G. B. 17	7	.....	"	51	G. B. 17	" 19
" 19	86	" 140	6	.....	"	51	" 140	" 19
" 23	99	C. B. 346	3	.....	"	64	G. B. 136	" 24
" 24	110	" 375	7	.....	"	76	C. B. 375	" 26
" 24	113	G. B. 25	2	.....	"	68	G. B. 25	" 24
" 30	143	C. B. 78	1	.....	"	5	G. B. 140	Dec. 1
" "	143	" 359	1	.....	"	5	" 104	" 1
" "	143	" 60	3	.....	"	13	" 20	" 3
Dec. 7	41	" 355	6	.....	"	28	C. B. 355	" 7
" "	41	" 362	3	.....	"	28	" 362	" 7
" "	41	G. B. 33	1	.....	"	28	G. B. 33	" 7
" "	41	C. B. 427	6	.....	"	28	C. B. 427	" 7
" 8	49	" 330	7	.....	"	33	" 330	" 9
" 10	66	" 349	2	.....	"	42	" 349	" 10
" "	66	" 164	5	.....	"	42	" 164	" 10
" 12	79	" 15	3	.....	"	49	" 15	" 12
" 16	112	" 435	9	.....	"	65	" 128	" 17
			85	f'r'd to 73.				

138 *Shipment of hides from Bryan to W. A. Ellis & Co., Galveston.*

Date.	W. B.	Car.	B'f hides.	B'd'es G. H.	Station.	Houston to Galveston.			
						W. B.	Car.	Date.	
1870.									
Nov. 4	11	C. B. 168	6	28	Bryan	8	C. B. 168	Nov. 4	
" 9	25	G. B. 104	5	7	"	20	G. B. 104	Nov. 9	
" 17	63	C. B. 430	7	34	"	44	" 8	" 18	
" 23	100	G. B. 4	11	24	"	62	" 4	" 23	
" 30	141	C. B. 203	15	16	"	86	C. B. 203	" 30	1 b'dle skins.
Decr. 7	38	" 425	13	22	"	24	" 425	Dec. 7	
" 28	161	" 240	23	28	"	93	" 240	" 28	
1871.									
Jan'y 2	1	" 239	13	24	"	2	" 239	Jan'y 2	1 b'dle skins.
" 31	194	" 128	13	.....	"	2	" 128	Feb'y 1	
Feb'y 2	17	G. B. 176	1	81	"	17	G. B. 176	" 4	
" 7	43	C. B. 210	.....	33	"	28	C. B. 210	" 7	
" 14	93	" 412	12	38	"	59	" 412	" 15	
" 14	88	" 428	.....	19	"	56	" 428	" 14	
" "	"	" 232	.....	124	"	56	" 232	" 14	
" "	"	G. B. 178	.....	83	"	56	" 178	" 14	
" "	"	C. B. 22	.....	124	"	56	" 22	" 14	
" 20	127	G. B. 116	12	.....	"	81	G. B. 116	" 21	
Total			131	685					2 b'dl's skins.

139 (The foregoing petition endorsed as follows, to wit:) "Petition filed Decr. 12, '71. Levi Jones, clk." "Service acknowledged. Wm. G. Hale, solr. for receiver. Decr. 12, 1871."

Reference to Edward T. Austin, master.—From the minutes, Decr. term, Decr. 20th, 1871.

N. A. COWDREY & OTHERS *vs.* G., H. & H. R. R. CO. AND OTHERS. } Ch., No. 1.

On motion of Walter Gresham, of counsel for W. A. Ellis & Co., and

by consent of the receiver, it is ordered that the petition and claim of said W. A. Ellis & Co. against the receiver in this cause for lost freight be referred to Edward T. Austin, esq., who is hereby appointed special master in chancery, for the purpose to examine and take proof upon said claim, and report to the court what amount, if anything, should be allowed and paid thereon.

140 *Report of special master.—Filed February 29th*, 1872.

Chancery, No. 1.

Report of Special Master Edward T. Austin, on the claim of W. A. Ellis & Co. against N. A. Cowdrey, as receiver, for lost freight.

To the hon. judges of the circuit court of the United States for the eastern district of Texas, at Galveston:

The master to whom was referred the above claim returns the same into court, with the testimony, written and oral, taken before him, with the proceedings had.

The master finds from the testimony that the four bales of hides claimed to have been lost were delivered to the G., H. & H. R. R., to be carried from Houston to Galveston; that they were the property of W. A. Ellis & Co., and were not delivered to the consignees; that they were worth in this market $923.00 in December, 1870, and that 8% interest on said sum from 1st Jany., 1871, to 29th Feby., 1872, 1 year
141 & 2 mos., is $86.14, making the amount of claim to date $1,009.14, (one thousand and nine dollars and fourteen cents,) and that W. A. Ellis & Co. have paid the freight on said hides.

The master therefore finds that there is due to W. A. Ellis & Co. from N. A. Cowdrey, receiver, the sum of one thousand and nine $\frac{14}{100}$ dollars on 29th Feby., 1872, and recommends that the same be ordered to be paid.

Respectfully submitted.

EDWARD T. AUSTIN,
Special Master.

(The foregoing report endorsed as follows, to wit:) "Report of Special Master Edward T. Austin." "Filed Febry. 29, '72. Levi Jones, clk."

Proceedings before master & testimony.—Filed February 29th, 1872.

U. S. circuit court, eastern district of Texas, at Galveston.

N. A. COWDREY ET AL.
vs.
142 THE GALVESTON, HOUSTON & HENDERSON R. R. & others, defendants. } Chancery, No. 1.

In the matter of W. A. Ellis & Co. vs. N. A. Cowdrey, as receiver, claims for lost freight, referred to Edward T. Austin, master, by order of court of December, 1871.

After due notice, the master was attended by Walter L. Gresham, esqr., representing claimants, and Robert Calwell, esqr., representing the receiver, at my office, in Galveston, on the 10th Febry., 1872, at 4 p. m., and both parties acknowledged themselves ready. Claimant produced

in evidence the receipt attached to their petition, purporting to be a receipt from the G., H. & H. R. R., by Agent R. H. Williams, for sundry packages of hides.

Claimant introduced witness J. H. VENIGARHOLTZ, who was sworn, and testified:

I was book-keeper for W. A. Ellis & Co., of Galveston, between the 4 day of Nov., 1870, and first day of March, 1871.

143 The business of the firm was cotton factors & commission merchants and dealers in hides & wool.

The four bales hides claimed in the petition were shipped from Kosse on or about the 5 of December, 1870, by Iglehart & Leonard, consigned to W. A. Ellis & Co. The hides belonged to W. A. Ellis & Co., and were shipped by their agents at Kosse, Iglehart & Leonard. The bill called for fourteen bales hides and five sacks of wool. Ten bales of hides were received & five bales of wool. The average weight of the bales hides received was 1,300 (thirteen hundred) pounds per bale. The value of the hides at that time in this market was 17¾ (seventeen and three-quarter) cents per pound. At that rate the value of the four bales hides not delivered was nine hundred and twenty-three dollars, currency. The usual time for the transportation of goods from Kosse to Galveston was from three to ten days, not exceeding ten days. I am still with the house of W. A. Ellis & Co., and these four

144 bales hides have never been received.

Questioned by receiver:

In answer to question by Mr. Colwell as to whether bills lading for hides specified good order or not, witness produced bill lading for 14 bales hides and five bales wool, not specifying good or bad order.

Here follows bill lading referred to in Witness Venigarholtz's testimony, and attached to same.

(Original.)

KOSSE, TEXAS, *Decr. 25th*, 1870.

Received, in order and condition, from Iglehart & Leonard, by the H. & G. C. R. R., the following articles, to be delivered in like order without delay to agt. Gal., H. & H. R. R. at Houston, on account of W. A. Ellis & Co.:

Marks.	Articles.	Weight.
(Star) (14)	Fourteen bales hides.....	
(Star) (5)	Five sacks wool.....	

For'd to W. A. Ellis & Co., Galveston, Texas.

"This bill lading produced by witness Venigarholtz on examination by receiver.

EDWARD T. AUSTIN,
Master.

145 I was cashier of the house at the date of this bill lading, and had the paying of their freight-bills. I did pay the freight-bills on those hides, as we did all bills sent to our office by the road, under

agreement with the road to settle all bills on Saturday. The agreement was made with the agent of the road—either with Mr. Colwell or Le Compt, or Mr. Mather.

At the time this freight-bill was paid we made no claim for loss, but thought the hides were behind and would come forward in a few days, as was often the case.

We have sent to the depot for hides without written order, but always sent our receiving & shipping clerk or our regular drayman. I do not think Ellis & Co. at this time had received any written notice from the road of consignments of hides being ready for delivery. Did receive verbal notices through our shipping-clerk afterwards, after April, 1871. I do not know of my own knowledge whether W. A. Ellis
146 & Co. received written notices of consignments from the road previous to Decr. 5, '70, or any time previous to April, 1871. Did not know until after the attempt to settle this claim in April, 1871, that our hides had not been properly receipted for to the railroad. I mean those that were received. The name of the party who was authorized to receive the hides at this time was Murdock. He was receiving and shipping clerk for W. A. Ellis & Co. Murdock acknowledged that he did not always receipt for hides delivered. It was not then customary for the road to take receipts. We usually shipped the hides from the depot to the vessel at the wharf or offing. The record was kept by Murdock. The evidence that we had of the hides being recd. was the dray-receipt, showing that the hides were shipped, as we never stored anything here, and the report of the shipping-clerk, and a bill-of-lading book kept by Murdock, into which all bills lading were copied.
147 Murdock did occasionally make an error in transcribing bills lading.

A book of entries of receipts of bills lading was produced at request of receiver, being the record kept by Murdock, and an entry of 20 Decr., '70, of receipt from R. R. of 5 bales & 4 bdles. d. hides, under which is written in Murdock's handwriting, "This entry is null and void," erased with pencil (witness.) The pencil-mark was made subsequent to the entry. Murdock stated to me at the time the entry was made, or shortly after, that in making entry he noticed that this lot of hides was part of other bills lading which he had not checked, and he made the entry null & void under it.

I remember the item being examined by me and Mr. Colwell; we noticed this entry, and I remarked that somebody had been fooling with this. I do not recollect calling Murdock's attention to it at the time. I recollect a settlement made with Le Compt or Mather, agent with the road, about the time of his, Le Compt's, discharge as agent. It
148 was subsequent to the date of this claim. It was settlement of freight-bills due the road. I do not recollect stating, on the settlement, that we had no claims against the road. I do not recollect making *making* such a statement to Le Compt or any other employee of the road.

Questioned by claimant:

The non-receipt of the four bales of hides claimed was discovered a few days after the regular time for their arrival, but were not positive of the loss until some time in January, 1871.

We had been expecting that the hides would come to hand, as it frequently happened that hides had been delayed but would come to hand in course of time; as soon as we were positive as to the hides being missing, we made the demand, Jany. 13, '71.

The receipt of these four bales of hides nowhere appears in the book of the house of W. A. Ellis & Co.

Adjourned to Tuesday, 13 Feby., 4 p. m.

149 TUESDAY, 13 *Feby.*, 1872—4 p. m.

Parties present.

Receiver introduced as witness B. W. LE COMPT, who was sworn, and testified:

I am agent for the G., H. & H. R. R. Co. at Galveston, and was agent for the receiver on the same road in Decr., 1870. Consignments of hides to W. A. Ellis & Co. over the road were frequent in Decr., 1870. (Shown bill lading.) I know nothing of this particular shipment.

I frequently sent notices to Ellis & Co. that their were hides in the depot consigned to them, which had been in the depot beyond the time prescribed, 24 hours.

(Objected to by claimant as a question of law.)

Sometimes they came for them at once, sometimes they did not. As station-agent, I made it part of my duty to collect the freight due for freight delivered by me without prepayment of freight.

(Objected to.)

I did not make any settlement with W. A. Ellis & Co. in January, 1871. I approved a voucher for a settlement for one bale green
150 hides, some horns, and some few dry hides. The amount was not thirty dollars; do not recollect the amount. I had no notice at the time that Ellis & Co. claimed to be short 4 bales of dry hides.

My arrangements with Ellis & Co. was this: That when my bills for freight came in to pay them, and if anything was short to notify me, and I would have it attended to through my collecting-clerk, T. A. Mather. I never received any notice through him that Ellis & Co. were short four bales of dry hides.

My connection with the receiver as agent of the road terminated 24 Decr., 1870, and when I left I knew that I was short with Ellis & Co. 1 b'dle green hides, some horns, and a few dry hides. I knew of nothing else, and had received from them no notice of anything else. I told Mr. Mather to settle for those things I knew of when he settled the freight-bills.

151 Most frequently W. A. Ellis & Co.'s drayman came for the hides without a clerk to sign for them.

Question by claimant:

Freight that was not called for within 24 hours was thrown off the cars and left at the depot. There was a watchman to guard them, sometimes two. My memoranda of delivery of goods *was* by drawing a circle around the entries on the freight-book. The entries had been previously made in the other books of the road. There *was* a way-bill book and delivery-book kept. The circular marks were made in the delivery-book. I cannot say that all the hides set out in the claim of W. A. Ellis & Co. were delivered to them. By the claim is meant the receipt attached to their petition.

It often happened that freight for which bills lading had been forwarded to Galveston from the central road was delayed in the transit. I have known instances where it was delayed six weeks on the road after receipt of bill lading by consignee. A bill lading might
152 be signed at Kosse one day, and the freight not reach the Galveston station for thirty days or more after.

Some people claim for short freight in two three days, some longer.

Ellis & Co. usually every Saturday. Parties would wait sometimes before demanding payment for short freight, signed for high up the central road, for sometimes three or four weeks.

Question by receiver:

I have never seen the receipt on which this claim is founded, and have never made an examination of it, and for that reason cannot say whether all the hides set down in it have been delivered to Ellis & Co.

So far as I know all the hides consigned to W. A. Ellis & Co. have been delivered to them, that came to the depot while I was in charge.

B. W. LE COMPTE.

(Claimant objected to all parts of testimony of Le Compt which goes to prove the delivery of the hides, because it appears from
153 his testimony that there is better testimony in the receiver's possession.)

Receiver introduced T. A. MATHER, who was sworn, and testified:

I was employed in December, 1870, by the receiver as collector in Galveston for the G., H. & H. R. R. I made a settlement with W. A. Ellis & Co. in first part of January, 1871, for short freight from the R. R., at request of Mr. Le Compt, and paid them some $27.10. I think the settlement was made with Mr. Vinegarholtz, their book keeper. When I settled with them I said, "Is Mr. Le Compt now square?" And he answered, "We are square now, up to date." Mr. Le Compt had promised to pay these bills for the road, and it was all that was claimed from us at that time.

Ellis & Co. always notified me when they were short of freight, and would not pay the freight-bill until Le Compt assumed the loss or remedied it. If Mr. Le Compt promised to make the loss good, when
154 he was notified by me, on my informing them it would be made right, they paid their freight-bill. W. A. Ellis & Co. never notified me that they were short four bales of hides, and required me to notify Le Compt before paying the freight-bill.

I sometimes act as delivery-clerk at the depot. "Bonney," Ellis & Co.'s drayman used to come to the depot for hides without a clerk. While acting as clerk I have found loose hides short, and they were paid for.

Questioned by claimant:

I collected from Ellis & Co. once a week; I do not remember Ellis & Co. paying me a bill of freight on produce not delivered. I left my bills with Ellis & Co. day by day, and on Saturday I called to collect them. If there was anything short on the bills, I carried them back to Le Compt or to the R. R., and I would be instructed to pay the shortage, and the freight-bills would then be paid.

I have heard of 4 bales hides being lost by Ellis & Co. in Jan'y, '71, after the settlement of the $27.10. At the time I made that set-
155 tlement, I went in there to settle all shortage during Le Compt's time. I do not know how long the freight had been short; may have been three or four weeks. The railroad keeps books showing that freight has been delivered.

(Claimant objected to all the testimony of T. A. Mather, which goes to show the delivery of the hides, on the ground that it discloses better evidence in possession of receiver.)

Testimony closed Feb'y 13, 1872.

Further proceedings had before Edward T. Austin, special master, in the case of W. A. Ellis & Co. against N. A. Cowdrey, receiver.

Before the master, on the 15th day of Feb'y, 1872.

Walter L. Gresham, attorney for claimant, made oath that a part of the testimony offered by him had been left out, and upon said affidavit the master reopened the case; and, on the 19th February, the
156 parties filed the agreement attached, marked A, to take testimony in Houston.

On the 28th February, 1872, the parties were present, and by consent the matter continued to the 29th, at 4 p. m., and on this 29th Feb'y, 1872, the parties were present, when the claimant' introduced Mr. VINEGARHOLTZ, who was sworn, and testified:

I have compared the Exhibit A, filed with and made a part of the petition of claimant, with the books of W. A. Ellis & Co., and *and* from said comparison I say that it appears that four of the bales of hides receipted for by the G., H. & H. R. R., in that exhibit, have not been received by W. A. Ellis & Co.

Claimant offered affidavit of Henry P. Roberts, under the agreement of 19th February, 1872, taken at Houston, 26th day of February, 1872; also, affidavit of T. P. Robinson, taken Feb'y 24, '72, under said agreement.

And no further testimony being offered, the evidence was closed, this 29 Feb'y, 1872.

EDWARD T. AUSTIN,
Special Master.

157 W. A. ELLIS & Co. } Ch. No. 1.
vs.
RECEIVER.

On this 15th day Feb'y, 1872, before me, Edward T. Austin, special master in said case, came W. L. Gresham, who made oath that, on 13th Feb'y, '72, on the trial before the master, he offered to prove by Vinegarholtz that he had, over night, compared the receipt attached to the claim with the books of W. A. Ellis & Co., and that there were four bales of the hides specified in the said receipt, short, which testimony, he supposes, was by mistake omitted from the written testimony; wherefore he asks the master to re-open the case and allow testimony to be taken in the same.

WALTER GRESHAM.

Sworn to & subscribed before me Feb'y 15, 1872.
EDWARD T. AUSTIN, *Master.*

On the above affidavit the above case, the testimony is re-opened to each party to produce testimony.
Feb'y 15, 1872.

EDWARD T. AUSTIN, *Master.*

158 A.

It is hereby agreed that affidavits may be read as evidence to prove the delivery to the Galveston, Houston and Henderson Railroad of any or all hides received by the Houston & Texas Central Railroad Company for Wm. A. Ellis & Co., of Galveston, between the 1st day

of November, 1870, and the first day of March, 1871; also, to prove the contents of the books of the two railroads in relation to said delivery.

Galveston, Feby. 19th, 1872.

GRESHAM & MANN,
Attys. for Wm. A. Ellis & Co.
N. A. COWDREY, *Receiver*,
By ROBERT COLWELL, *Agt.*

STATE OF TEXAS,
County of Harris:

My name is Henry P. Roberts, and am in the employ of G., H. & H. R. R. Co., and have been since Sept. 3rd, 1870. I have examined the Exhibit A filed with and made a part of the petition of W. A.
159 Ellis & Co. vs. G., H. & H. R. R. Co., filed Decr. 12th, 1871, by Levi Jones, clerk, and would state that is a correct statement, as appears from the books of the G., H. & H. R. R. Co., at this place, of the hides recd. by the G., H. & H. R. R. Co. from the H. & T. C. R. W. Co. for W. A. Ellis & Co., of Galveston, at the dates specified in the exhibit. I have examined the bill of lading given by the H. & T. C. R. W. Co., at Kosse, Texas, on Dec. 5th, 1870, for 14 bales hides and five sacks wool, to be delivered to the G., H. & H. R. R. Co., at Houston, for act. of W. A. Ellis & Co., and would state that it is embraced in the exhibit above referred to.

HENRY P. ROBERTS.

Sworn to and subscribed before me this 26th day of February, A. D. 1872.

[SEAL.] ED. L. LEONHARDT,
U. S. Commissioner of the East. Dist. of Texas.

160 STATE OF TEXAS,
County of Harris:

My name is T. P. Robinson. I reside in Harris County, and am in the employ of W. A. Ellis & Co., of Galveston. I have examined the B| lading given by H. & T. C. R. R., at Kosse, on the 5th Dec., 1870, for fourteen bales hides and five sacks wool, to be delivered to G., H. & H. R. R., to be forwarded to W. A. Ellis & Co., at Galveston. It appears from the investigation and inspection of the records of the H. & T. C. R. R. that these hides were delivered to the G., H. & H. R. R., and are embraced in the Exhibit A filed with and made a part of the petition of W. A. Ellis & Co. versus G., H. & H. R. R., filed Dec. 12, 1871, by Levi Jones, clerk.

T. P. ROBINSON.

STATE OF TEXAS,
County of Harris:

Personally appeared before me, the undersigned authority, T. P. Robinson, of this county, and to me personally known, who, after
161 having been duly sworn by , on his oath says that the facts as herein stated, sworn to, and subscribed are true.

Witness my hand a' official seal, at Houston, February 24th, 1872.

[SEAL.] E. SIMMLER,
Notary Public, Harris County.

Vol. 4, No. 2076.

I, Edward T. Austin, master in chancery in U. S. circuit court, in case chancery No. 1, do hereby certify that the foregoing fourteen ½

pages of writing contain all the testimony taken before me in the case of *of* W. A. Ellis & Co. vs. N. A. Cowdrey, receiver.

EDWARD T. AUSTIN, *Master.*

Testimony in writing.

The Exhibit A attached to petition.
" Bill of lading of Houston & Texas Central Railroad for 14 bales hides & 4 sacks wool, of December 5th, 1870.
" affidavit of Walter L. Gresham.
" agreement to take testimony by affidavit, (A.)
" affidavit of Henry P. Roberts.
" affidavit of T. P. Robinson.

162 *Witnesses before master.*

For claimant, J. H. Vinegarholtz.
" receiver, B. L. Le Compt.
" " T. A. Mather.

EDWARD T. AUSTIN,
Special Master.

(The foregoing proceedings before master and testimony endorsed as follows, to wit:) " Proceedings before master & testimony." " Filed Feby. 29, 1872. Levi Jones, clk."

Master's report received.—From rules and orders Feby. 26th, 1872.

N. A. COWDREY & OTHERS *vs.* G., H. & H. R. R. CO. ET AL. } Ch., No. 1.

This day came Edward T. Austin, master in chancery in said cause, and filed herein his report on the claim of W. A. Ellis & Co. against the receiver in said cause.
Feby. 26, '72.
Attest:

LEVI JONES,
Clk. U. S. Circt. Court, E. D. T., G.

163 *Master's report confirmed.—From rules and orders, May 6th*, 1872.

N. A. COWDREY ET AL. *vs.* THE GALVESTON, HOUSTON & HENDERSON R. R. Co. et al. } No. 1. In chancery.

In the matter of the claim of W. A. Ellis & Co. against the receiver, N. A. Cowdrey, the master, Edward T. Austin, having filed his report in this behalf in this court on the 26th February, 1872 reporting the sum of one thousand and nine $\frac{14}{100}$ dollars to said W. A. Ellis & Co., for lost freight on said railway, and a month having elapsed since the filing of said report and no exceptions having been filed thereto: Now, on motion and at the request of Messrs. Gresham & Mann, counsel for said W. A. Ellis & Co., it is hereby ordered that said report be, and the same is hereby, confirmed.
Attest:

LEVI JONES,
Clerk U. S. Circt. Court, E. D. T., G.

164 *Precept to enter order confirming the master's report upon the claim of W. A. Ellis & Co.—Filed May 6th, 1872.*

In the circuit court of the United States for the eastern district of Texas, at Galveston, May rules, May 6th, 1872.

N. A. COWDREY ET AL.
vs.
THE GALVESTON, HOUSTON & HENDERSON R. R. Co. et al. } No. 1. In chancery.

In the matter of the claim of W. A. Ellis & Co. agst. the receiver, N. A. Cowdrey, the master, Edwd. T. Austin, having filed his report in this behalf in this court on the 26th of February, 1872, reporting the sum of $1,009.14, (one thousand and nine $\frac{14}{100}$ dollars) due to said W. A. Ellis & Co., for lost freight on said railway; and a month having elapsed since the filing of said report and no exceptions having been filed thereto, the clerk will enter an order confirming in all things the master's report.

GRESHAM & MANN,
Counsel for W. A. Ellis & Co.

To LEVI JONES, *Clerk.*

165 The foregoing document endorsed as follows, to wit: "Precipe to enter order confirming the master's report upon the claim of W. A. Ellis & Co." "Filed May 6th, 1872. Levi Jones, clk."

Master's report confirmed.—From the minutes, May term, May 6, '72.

W. A. ELLIS & CO.
vs.
N. A. COWDREY, RECEIVER. } Ch. No. 1.

IN THE MATTER OF THE SUIT OF N. A. COWDREY et al.,
vs.
THE GALVESTON HOUSTON & HENDERSON RAILROAD COMPANY et al.

Upon reading the report of Edward T. Austin, esqr., one of the masters of this honorable court, made in this cause, and bearing date of the 29th day of February, 1872, it appearing that, pursuant to a decretal
166 order made in this cause on the 20th day of December, 1871, the said master has in all particulars pursued the directions of the said order, and has ascertained that there was, on the 29th day of February, 1872, due and owing from the receiver, N. A. Cowdrey to W. A. Ellis & Co., the sum of one thousand and nine $\frac{14}{100}$ dollars.

Thereupon, and the counsel of the parties having been heard thereon, it is ordered, adjudged, and decreed, and his honor, the judge, in virtue of the powers and authority of the court, doth order, adjudge, and decree that the said report be absolutely confirmed in all things; that the defendant, N. A. Cowdrey, receiver, pay to the complainants, W. A. Ellis & Co., the said sum of $1,009 $\frac{14}{100}$, reported by the said master to be due from the said receiver to the said W. A. Ellis & Co., and that the receiver do further pay to the complainants their costs in the above suit to be taxed, including the master's fees; and that interest @ 8% *per cent.*

per annum from the 29th day of February, 1872, till paid be added to the amount decreed.

167 *Continuance from the minutes, May term, June 15th, 1872.*

N. A. COWDREY ET AL.
vs.
THE GALVESTON, HOUSTON & HENDERSON Railroad Co. and others. } Ch. 1.

Ordered, that the several reports made by the master in this cause upon applications for damages to goods carried, or received to be carried, on the railroad or otherwise, during the management thereof by the receiver, after said reports shall have been confirmed, do stand for further consideration as to the order to be taken for the payment of said claims until the next term of the court, with leave to the parties and the receiver to file suggestions in reference to such payment.

168 *Motion for rule to show cause v. F. P. James.—Filed June 5th, 1873.*

In the circuit court of the United States for the eastern district of Texas, at Galveston.

N. A. COWDREY ET AL.
vs.
G., H. & H. R. R. CO. ET AL. } No. 1. In chancery.

In the matter of the application of W. A. Ellis & Co. on order of court requiring F. P. James to discharge decree against receiver, rendered May 6th, 1872.

Now come the said W. A. Ellis & Co. and represent that, on the 15th day of April, 1873, in pursuance of the suggestion of the said court, and in order to make good their said decree of May 6th, 1872, they (in conjunction with Moody & Jemison, and being included and referred to in the petition of the said Moody & Jemison, which was filed in this cause for the benefit of the said Moody & Jemison as well as all other parties similarly situated) filed their petition in said cause and asked an order of the court requiring F. P. James to discharge the said decree of
169 May 6th, 1872, in accordance with the obligations expressed in his certain bond of December, 1871; which said petition has been served on said James in person, to wit, on the 13th day of May, 1873.

Whereupon they move the court to enter its rule against the said James, requiring him to appear at the next term of this hon. court, and show cause if any there be why decree shall not be rendered against him for the amount of petitioner's decree of the 6th of May, 1872, to wit, the sum of one thousand and nine $\frac{14}{100}$ dollars, ($1,009 $\frac{14}{100}$,) and interest, costs, and such other relief against the said F. P. James as is prayed for in petitioner's said petition of April 15th, 1873.

GRESHAM & MANN,
Counsel.

The foregoing motion endorsed as follows, to wit: "Motion for rule to show cause. Filed June 5th, 1873. C. Dart, clerk."

170 *Petition v. F. P. James.—Filed June 7th*, 1873.

W. A. ELLIS & CO.
vs.
G., H. & H. R. R. CO. ET AL. } No. 1. In chancery.

Suit pending in the circuit court of the United States for the eastern district of Texas.

To the honorable judge of said court:

W. A. Ellis and Winter Walker, heretofore citizens of and doing business in the city and county of Galveston, State of Texas, under the firm-name and style of W. A. Ellis & Co., respectfully showeth: That on the 6th of May, 1872, they obtained the decree of this court for the sum of one thousand and nine $\frac{14}{100}$ dollars against N. A. Cowdrey, receiver in said cause No. 1 in chancery, in pursuance of proceedings theretofore had in said court, according to its rules and practice, between complainants and said receiver, and by the terms of said decree the said receiver was ordered to pay said sum, with interest thereon,
171 to these complainants, and also to pay the fees of Edwd. T. Austin, master in said cause; that altho' said decree has been long rendered, and the said receiver been often requested to pay and discharge the same, he has wholly failed and refused so to do, and still refuses, and he informs complainant that he has expended all sums under the former orders of the court that have come to his hands as receiver, as he has heretofore reported to the court; and complainants are and have been, since the rendition of said decree, unable to procure the payment and satisfaction of said decree by said receiver; that F. P. James, a citizen of the State and city of New York, purchased the premises in the possession of said receiver in said chancery cause No. 1, under the orders and with the approval of this court, and on the day of December, 1871, made and executed his certain bond for fifty thousand dollars, now on file and of record in said court, and a copy thereof is hereto attached marked "Exhibit A," and made a part hereof, and referred to for the particulars, terms, and conditions of said bond;
172 that under the terms of said bond the said James is and heretofore has been liable to pay these complainants the amount of their said decree, but wholly refuses so to do tho' often requested. Wherefore complainants pray for such orders as the court may be pleased to give against said James, and for its decree against him for the amount of their aforesaid claim, interest, and costs, and for its process to enforce the same summarily; and they pray the court to grant them such further general and particular relief and such orders and process herein as may be necessary and proper against either or both said Cowdrey and James for the enforcement of their rights under their said decree.

GRESHAM & MANN,
Sols. for Complainants.

173 *Exhibit A attached to the foregoing petition.—Bond of James.—Filed December 15th, 1871.*

A.

Circuit court of the United States, eastern district of Texas. December term, 1871.

N. A. COWDREY ET AL.
vs.
THE GALVESTON, HOUSTON & HENDERSON Railroad Company et al.

Undertaking of purchasers to pay any future claim which may be allowed against the receiver.

Whereas in the above-entitled cause the premises in the possession of N. A. Cowdrey, the receiver, have been sold and the sale thereof confirmed by this court; and whereas the railroad has been in the possession of this court since February 27th, 1867, to this date, and it is possible there may be still outstanding and unliquidated claims against the receiver growing out of the operation of the railroad since, as for lost or damaged freight, or for injuries to persons or property, *or prop-*
174 *erty*, or for expenses allowed by the court:

Now, therefore, I, Fred. P. James, of the city and State of New York, the purchaser of said premises, do hereby, in consideration of the premises, obligate myself, my heirs, successors, and assigns, in the penal sum of fifty thousand dollars to pay any and all claims against said receiver which this court shall consider him liable to pay in excess of the funds and property in the hands of the receiver.

In witness whereof I have hereto set my hand and seal at the city of Galveston this day of December, 1871.

F. P. JAMES.

In presence of—
JAMES F. MAGUIRE.

The foregoing Exhibit A attached to Petition v. F. P. James, endorsed as follows: "Undertaking of purchaser to pay any future claim which may be allowed against the receiver. Filed Dec. 15, 1871. Levi Jones, clk. Exhibit A."

The foregoing petition endorsed as follows: "Petition v. F. P. James. Filed June 7th, 1873. C. Dart, clerk."

175 *Writ to serve petition.—Filed June 7th, 1873.*

In the circuit court of the United States for the eastern district of Texas.

N. A. COWDREY & OTHERS
v.
G., H. & H. R. R. Co. & OTHERS. } No. 1. In chancery.

The President of the United States of America to the marshal of the eastern district of Texas, greeting:

You are hereby commanded to serve William G. Hale, attorney for F. P. James, with the accompanying certified copy of a petition filed

by W. A. Ellis & Co. this day against said James in the above cause. Herein fail not.

Witness the honorable Nathan Clifford, senior justice of the Supreme Court of the United States, and the seal of said circuit court at Galveston, June 7th, 1873.

[SEAL.]

C. DART,
Clerk U. S. Circt. Ct., E. D. T., G.

176 *Marshal's return on the foregoing writ.*

Received this writ on the 7th day of June, 1873, executed it forthwith by serving William G. Hale, attorney for F. P. James, with an accompanying certified copy of a petition filed by W. A. Ellis & Co. against said James.

TOM. P. OCHELTREE,
U. S. Marshal,
By W. T. CLAYTON,
Deputy U. S. M.

Marshal's service, $2.00 paid by pltffs.

W. T. CLAYTON,
Deputy U. S. M.

The foregoing writ endorsed as follows: "Writ to serve Wm. G. Hale, atty. for F. P. James, with copy of petition of W. A. Ellis & Co. Issued June 7th, 1873. C. Dart, clerk. Returned and filed June 7th, 1873. C. Dart, clerk."

177 *Judgment vs. F. P. James.—From the minutes, Decr. term, Feby.* 14, 1874.

W. A. ELLIS & CO.
vs.
N. A. COWDREY, RECEIVER, & F. P. JAMES. } 72.

Intervention in chancery cause No. 1, N. A. Cowdrey & others vs. Galveston, Houston & Henderson R. R. Co. & others.

This cause came on to be heard at this term, the petitioners, W. A. Ellis & Co., appearing by their attorneys, and the said Cowdrey, receiver, and F. P. James appearing by their attorneys; and thereupon the court having examined into all the facts of the case, and having heard the arguments of counsel thereon, and having duly considered the question at issue, and being fully advised in the premises, it is ordered and adju'ged that Frederick P. James pay into court, for the use and benefit of petitioners, the sum of one thousand and nine dollars and fourteen cents, with interest thereon from Feby. 29th, 1872; also
178 all the costs in this behalf incurred, the said sum being the amount allowed by the court, by its orders of date May 6th, 1872, to said petitioners for freight received by said railroad and lost during the time the road was in the hands of the receiver, and for which said James is bound upon his bond.

To which ruling and order of the court the defendants except and give notice of appeal to the next term of the Supreme Court of the United States.

Appeal-bond fixed at $1,250.00.

179 *Leave to Buck & Levy to file petition vs. Recr.—From minutes Decr. term, Decr.* 18, 1871.

N. A. COWDREY AND OTHERS
v.
GALVESTON, HOUSTON AND HENDERSON R. R. Co. & others. } Ch. No. 1.

This day came J. Z. H. Scott and asks leave of the court to file a petition in this cause on behalf of Buck & Levy, who allege that they have a claim against the receiver herein for lost freight. It is therefore ordered that said petition may be filed.

Petition.—Filed Decr. 18, 1871.

N. A. COWDREY AND OTHERS
against
THE GALVESTON, HOUSTON AND HENDERSON Railroad and others. } In equity.

In the circuit court of the United States in and for the eastern district of Texas, sitting at Galveston in said district.

To the honorable judges of the above-named court:

The petition of Robert Buck and Herman Levy, who both re-
180 side in the town of Brenham, in the county of Washington and State of Texas, respectfully sheweth: That on and since the 15' day of September, A. D. 1870, your petitioners were and have been merchants and partners, trading and doing business in said town of Brenham, under the firm-name and style of "Buck & Levy;" that on the said 15th day of September, 1870, N. A. Cowdrey, the receiver heretofore appointed and then acting in the above-named cause, in the course of his duties as such, by B. W. Le Compt, his agent for this purpose, received on board the Galveston, Houston and Henderson Railroad (13) thirteen cases of merchandise to be delivered to your petitioners at the said town of Brenham, and executed a bill of lading to that effect, a copy whereof is filed herewith by way of exhibit, and thereupon undertook to deliver the said cases of merchandise according to the terms of said bill of lading, within a reasonable space of time, say ten days from the date of receiving the same; that, though the time for delivering said cases of merchandise has long since passed, the said re-
181 ceiver has hitherto del'vered only twelve of them to your petitioners, and, though often requested to deliver the remaining case or pay the value thereof, he has hitherto wholly failed and refused so to do.

Your petitioners further show that they are the owners of said lost or missing case of merchandise, and that the same contained merchandise as set forth in the bill of items herewith filed of the value of $\$118\frac{41}{100}$ as set forth in said bill of items, for the loss of which they have received no manner of satisfaction.

Your petitioners pray therefore that such orders may be made in the premises as the nature of the case demands, and that the said receiver may be ordered to pay to your petitioners the value of the above-mentioned lost or missing case of merchandise as set forth in said bill of items, and the costs of this petition, and for such other relief as shall unto your honors seem meet and right.

ROBERT BUCK AND
HERMAN LEVY,
By J. Z. H. SCOTT, *their Solicitor.*

182 *Copy of the bill of lading referred to in the foregoing petition.*

GALVESTON, *Sept. 15th*, 1870.

Received in good order from N. H. Recker, on board the Galveston, Houston & Henderson Railroad, the following-named articles to be delivered in like good order and condition to Buck & Levy at Brenham.

Charges $ ex. Clinton trip ✕ 109.

Marks.	Articles.
Buck & Levy	12 cases B. & S.
Brenham	1 " guns

(Signed) B. W. LECOMPTE.
HUSLEE.

Bill of items referred to in the foregoing petition.

G., H. & H. R. R. to Buck & Levy.

1 doz. men's buff, pegged P. S. brog's, 6–11	17 40
2 " boy's kip, P. S. " 1–5, 14–10	28 20
1 " men's calf, M. S. Malakoffs, 5–10	30 00
1 " " peg'd bals 3–7	21 00
1 " children's cop. tip'd bals 6–11	10 00
Strapping, &c	25
Freight from N. O	80
	$107 65
Unsal damage ch'g'd on lost freight 10%	10 76
Due Buck & Levy	$118 41

183 (Endorsed:) Ch. 73. No. 1. In equity. U. S. circuit court. N. A. Cowdrey and others against The G., H. & H. R. R. and others. Petition of Buck & Levy against the receiver, N. A. Cowdrey. Filed Decr. 18th, 1871. Levi Jones, clerk.

Agreement as to reference of claim.—Filed Jany. 8th, 1872.

N. A. COWDREY AND OTHERS
against
THE GALVESTON, HOUSTON AND HENDERSON Railroad and others. } No. 1. In equity.

In the circuit court of the United States in and for the eastern district of Texas, sitting at Galveston.

In the matter of the petition of Robert Buck & Herman Levy against the receiver, N. A. Cowdrey, (for freight alleged to have been lost,) filed December 18th, 1871, it is agreed by the parties interested that an order be entered in the above-mentioned cause, referring said petition to E. T. Austin, esq., master in chancery, for examination and report,
184 that upon notice of time and place of hearing, said petition may be heard before said master, and that further process and notice than as herein specified be waived.

J. Z. H. SCOTT,
For Petitioners, Buck & Levy.
N. A. COWDREY, *Receiver,*
By ROBERT COLWELL, *Agent.*

Upon filing of the foregoing agreement in the U. S. circuit court for the eastern district of Texas, at Galveston, the clerk of said court will enter the order as stipulated in the agreement.

T. H. DUVAL,
U. S. Judge.

(Endorsed:) Ch. No. 1. Ch. 73. N. A. Cowdrey & others v. Galvesn, Houston & Henderson R. R. Co. & others. Agreement as to reference of claim of Buck & Levy and order thereon. Filed Jany. 8th, 1871. Levi Jones, clk.

185 *Order referring petn. to master.—From rule & order book Jany. 8th, 1872.*

N. A. COWDREY AND OTHERS
v.
GALVESTON, HOUSTON & HENDERSON RAILroad Company & others. } Ch. No. 1.

By virtue of the agreement this day filed in the above-entitled cause, and by direction of the Hon. J. H. Duval, U. S. judge, it is ordered that the petition of Robert Buck and Herman Levy against the receiver, N. A. Cowdrey, (for freight alleged to have been lost,) filed Decr. 18th, 1871, and the petition of Robert Hoffman against the receiver, N. A. Cowdrey, (for freight alleged to have been lost,) filed Decr. 23, 1871, be referred to Edward J. Austin, esq., who is hereby appointed a special master in chancery for the purpose, to examine and report to the court the amounts properly due, if anything, from the receiver to them, respectively.

(Attest) LEVI JONES,
Clerk U. S. Circt. Court E. D. T., G.

GALVESTON, *Jany. 8th*, 1872.

186 *Affidavit of Herman Levy.—Filed Jany. 8th, 1872.*

THE STATE OF TEXAS,
County of Washington:

Before me, the undersigned J. J. Stockbridge, clerk district court Washington County, duly authorized in and for the above-named county and State to administer oaths, &c., this day personally came HERMAN LEVY, who being by me first duly sworn, upon his oath says that he is a member of the mercantile firm and partnership composed of himself and Robert Buck, and doing business in the town of Brenham, in the State of Texas, under the firm-name and style of Buck & Levy, the consignees in the bill of lading hereto attached, marked "A." That of the thirteen (13) cases of merchandise mentioned in said bill of lading, only twelve have been delivered to said firm, and that the other case, containing merchandise as specified in a bill of particulars hereto attached, marked "B," of the value of $\$118\frac{41}{100}$, as specified in said bill, has never been delivered at any time or place to said firm, or to any one authorized to receive the same for them; and that affiant
187 believes said case of merchandise undelivered was lost while in charge of the Galveston, Houston & Henderson Railroad, the carrier mentioned in said bill of lading.

HERMAN LEVY.

Sworn to and subscribed before me this 11th day of December, A. D. 1871.

Witness my official signature and seal the day and year last above mentioned.

[SEAL.]

J. J. STOCKBRIDGE,
Clerk D. C. W. C.,
By A. M. HUGHES, *Dept.*

(Duplicate.)

GALVESTON, *Sept. 15th*, 1870.

Received, in good order, from N. H. Ricker, on board the Galveston, Houston & Henderson Railroad, following-named articles to be delivered in like good order and condition. Buck & Levy, at Brenham.

Charges, $. Ex. Clinton. Trip. #169.

Marks.	Articles.
Buck & Levy,	12 cases B. & S.
Brenham,	1 " guns.
"A."	B. W. LE COMPT. HUSLEE.

188 *G., H. & H. R. R. Co. to Buck & Levy.*

1 doz. men's buff, pegged P. S. brog's, 6–11	17 40	
2 " boys' kip, P. S. " 1–5, 14.10	28 20	
1 " men's clf., M. S. Malakoff's, 5–10	30 00	
1 " " " peg'd bals., 3–7	21	
1 " children's cop. t'p'd bals., 6–11	10	
Strapping, &c	25	
Freight from N. O	80	
B.		107 65
Usual damages, 10 %		10 76
Due		$118 41

GALVESTON, *Novr.*, 1870.

(Endorsed :) No. 1, ch. 73. In the U. S. circuit court. In equity. N. A. Cowdrey & others against The Galveston, Houston & Henderson Railroad and others. In the matter of the petition of Robert Buck & Herman Levy against N. A. Cowdrey, the receiver in the above cause. Affidavit of Herman Levy. Filed Jany. 8th, 1872. Levi Jones, clk.

189 *Master's report.—Filed Jany. 20th*, 1872.

U. S. circuit court eastern district of Texas, at Galveston.

BETWEEN N. A. COWDREY AND OTHERS, complainants, *and* THE GALVESTON, HOUSTON & HENDERSON Railroad Company and others, defendants. } Chancy. No. 1.

In the matter of the claim of Buck & Levy against N. A. Cowdrey, receiver, for lost goods referred to Edward T. Austin, as master, under agreement of parties and order of court thereon, the master reports:

That on the 8th January, 1872, the parties appeared before the master,

the claimants being represented by J. Z. H. Scott, esq., and the receiver by Robert Colwell.

The claimant produced as evidence bill of lading by G., H. & H. Railroad, dated Sept. 15, 1870, for thirteen cases merchandise, to be delivered at Brenham, to Buck & Levy, and the sworn statement of Herman Levy, copartner of firm of Buck & Levy, that one case of the
190 thirteen, mentioned in the bill of lading, had not been delivered by the railroad as per bill lading or at all; also a bill of contents of the case not delivered, and value of articles sworn to, stating the value to be one hundred and eighteen dollars and forty-one cents.

The receiver offered no evidence to prove delivery of the case sworn to be lost or its value.

The master therefore finds from the evidence that there is due the claimants, Buck & Levy, copartnership, from N. A. Cowdrey, as receiver, the sworn value of the contents of the case not delivered, viz, the sum of one hundred and eighteen $\frac{41}{100}$ dollars.

Jany. 8, 1872.

EDWARD T. AUSTIN,
Special Master.

(Endorsed:) Ch. 73, chancery No. 1. Claim of Buck & Levy against N. A. Cowdrey, receiver. Report of Edward T. Austin, special master. Filed Jany. 20, 1872. Levi Jones, clk.

191 *Receipt of master's rpt. Note of.—From rule & order book Jany.* 20, 1872.

N. A. COWDREY AND OTHERS
vs.
GALVESTON, HOUSTON & HENDERSON RAILroad Company & others. } Ch. No. 1.

This day came Edward T. Auston, esqr., special master in this cause, and files herein his report upon the claims of Buck & Levy and Robert Hoffman against the receiver referred to him by the order of the court.

Jany. 20, 1872.

(Attest) LEVI JONES,
Clk. U. S. Circt. Court E. D. T., G.

Order confirming master's report.—From minutes December term, 1871, *Feb'y 21st*, 1872.

N. A. COWDREY AND OTHERS
v.
THE GALVESTON, HOUSTON AND HENDERSON Railroad Co. & others. } Ch. No. 1.

In this cause came on to be heard, this day, the petition of Robert Buck and Herman Levy against the receiver, N. A. Cowdrey, filed December 18th, 1871, upon the master's report thereon and the
192 prayer of said petition; and it appearing to the court that the said report is corrrect, and that no exceptions have been filed thereto by either party, it is ordered that the same be in all things confirmed, and the prayer of said petition is granted, and the receiver, N. A. Cowdrey, is ordered to pay the sum of one hundred and eighteen dollars and forty-one cents to the petitioners, Robert Buck & Herman

Levy, and all costs incurred in the matter of this application to be taxed by the clerk.

Judgment v. F. P. James.—From the minutes December term, 1872, Feb'y 14, 1873.

BUCK & LEVY
v.
N. A. COWDREY, RECEIVER, & F. P. JAMES. } 73.

Petition in chancery, cause No. 1, N. A. Cowdrey et als. v. Galveston, Houston & Henderson Railroad Company & others.

This cause came on to be heard at this term, the petitioners, Buck & Levy, appearing by their attorneys, and the said Cowdrey, receiver, and F. P. James, by their attorneys. And thereupon, the court having exam'd into all the facts of this case, and having heard the argu-
193 ments of counsel thereon, and being fully advised in the premises, it is considered and adjudged by the court that Frederick P. James, the purchaser of the Galveston, Houston & Henderson Railroad, be, and he is hereby, required to pay into court, for the use and benefit of said petitioners, the sum of one hundred and eighteen dollars and forty-one cents, with interest thereon at eight per centum per annum, f the 21st day of February, 1872, being the amount decreed to said petitioners by this court on said last-named date, and for the payment whereof said James is bound on his bond.

It is further ordered that said James pay into court all costs in this behalf incurred.

To which ruling and order of the court the said defendants, by their counsel, except, and gave notice of appeal to the next term of the Supreme Court of the United States.

194 *Leave to file a petition on behalf of Jno. W. Norris.—From the minutes, Dec'r term, Dec'r 19th, 1871.*

N. A. COWDREY AND OTHERS
vs.
GALVESTON, HOUSTON & HENDERSON RAILroad Co. and others. } Ch. No. 1.

On motion of Spencer & Stewart, attorneys for Jno. W. Norris, it is ordered that they have leave to file, on behalf of said Norris, a petition for an order on receiver to pay a claim alleged by said Norris to be due him for lost freight.

Petition.—Filed December 19th, 1871.

In circuit court of United States, eastern district of Texas.

N. A. COWDREY AND OTHERS
vs.
THE GALVESTON, HOUSTON AND HENDERSON Railroad Company and others. } Ch. 1.

To Hon. Thos. H. Duval, judge of circuit court United States for
195 the eastern district of Texas:

Your complainant, John W. Norris, a resident citizen of the

city of New Orleans and State of Louisiana, complaining of The Galveston, Houston & Henderson Railroad Company, an incorporated company, chartered by the legislature of the State of Texas under said name, and having their office or principal place of business in the city of Galveston, State of Texas, and of N. A. Cowdrey, the receiver thereof, represents that said railroad franchise, &c., has been a long time in litigation in the above-styled cause in your hon. court, and that some time pending said litigation a receiver was appointed by the court with full authority to take charge and possession of said railroad, rolling-stock, fixtures, &c., and that N. A. Cowdrey was such receiver during the past year, and during present year, and up to the present time, for the purposes of settling of claims against him as such receiver. That whilst said Cowdrey was acting as such receiver, on the 24th
196 Jan'y, 1870, your complainant shipped by said railroad one hundred and thirty ploughs, which said The Galveston, Houston & Henderson Railroad received at the said city of Galveston, to be by them conveyed and carried, as common carriers, at accustomed and usual rates of freight, to Houston, Harris County, Texas. That said ploughs, at the time they were so received for transportation, were worth in said city of Galveston one thousand & ninety-five dollars and eighty-seven cents, and said plows were received by said railroad by its agents and officers, and were marked "J. S. & Co.," which initials represented John Schacky & Co., at Brenham, Texas, being the firm to whom the ploughs were consigned. The said railroad received said plows on board their cars to transport them over their road as per bill of lading herewith presented, but said railroad has never delivered said ploughs, or any of them, but the same are wholly lost to petitioner, to his damage of one thousand and ninety-five dollars & 87 cents, and interest on said sum from the 24th of January, 1870,
197 to the present time. And said railroad has become liable to pay your complainants the said sum of $1,095.87, with interest thereon from 24th Jan'y, 1870. That although said railroad has been sold by order of the court made in said cause, the said decree of the court declares, "That upon the purchaser filing his undertaking in this court, in this cause, in the sum of fifty thousand dollars, obligating himself & his assigns to pay all claims which the receiver is not in funds to pay, that may be allowed by the court against the receiver for loss or injury to property or to person," and that, "the powers of the receiver, so far as appertains to his accounts and to the collection of moneys due him & to the settlement of claims against him, be and the same are hereby continued. He is hereby directed to settle and liquidate the same as soon as practicable." Whereupon prayer is made that the aforesaid claim be allowed and that said receiver be ordered to pay the
198 same, and for such further order in the premises as are proper, and for equity and general relief.

JOHN W. NORRIS, *Compl't.*
By *His Atty.*

H. W. HAYS &
SPENCER & STEWART,
Attys. for Compl't.

The following bill of lading attached to the foregoing petition:

Bill of lading.

Dray No. . GALVESTON, *Jan'y 24th*, 1870.

Received, in good order, from steamer W. G. Hewes, # 98, on board cars G. H. & H. R. R.

Mark:	Articles:
J. S. & Co.	a/c G. H. & H. R. R. 130 plows. 2 p'k'ges, 50 P. points.

(S'g'd) OMEROD.

A true copy:

JOHN T. VANSICKER.

This day personally comes H. W. Hays, who, on oath, says that the several matters and things contained in the foregoing petition as stated of his own knowledge are true, and those stated from information are true to the best of his knowledge, information, and belief.

H. W. HAYS.

199 Sworn to and subscribed before me Dec'r 19th, 1871.

LEVI JONES, *Clerk.*

(The foregoing endorsed as follows, to wit:) "Filed Dec'r 19, '71. Levi Jones, clk."

Motion of Norris to have his claim referred to master, &c.—Filed Dec'r 22nd, 1871.

In circuit court of the U. S. for the eastern dist. of Texas, Dec'r 22nd, 1871.

N. A. COWDREY AND OTHERS
vs.
THE GALVESTON, HOUSTON & HENDERSON Railroad Company and others. } Ch. No. 1.

Comes Jno. W. Norris and moves that his claim, which, by order of the court, was heretofore filed in this cause, be referred to Special Master Edward T. Austin, to hear the evidence and report upon the validity and amount of said claim to the first day of the next term or adjourned term of this court, at which time the said claim and report thereon is set down for final hearing.

200 J. W. NORRIS,
By his Solicitors.

H. W. HAYS &
SPENCER & STEWART,
Solicitors for J. W. Norris.

(The foregoing motion endorsed as follows, to wit:) "Motion of Norris to have his claim referred to master, &c. Filed Dec'r 22, '71. Levi Jones, clk."

Order of reference.—From the minutes Dec'r term, Dec. 22, '71.

N. A. COWDREY & OTHERS
vs.
G., H. & H. R. R. Co. & OTHERS. } Ch. No. 1.

On motion of Spencer & Stewart, attorneys for John W. Norris, who has by leave of the court filed a petition herein against the receiver, based upon a claim for lost freight, it is now ordered by the court that said petition be referred to Edward T. Austin, esq., who is hereby appointed special master for the purpose, to examine and take proof
201 upon said claim, and report to the court what amount, if anything, should be paid thereon.

It is further ordered that said report be made to the court at its next term, or at an adjourned term thereof.

Report of of *special master upon the claim of Jno. W. Norris.—Filed February 26th,* 1872.

Chancery No. 1. U. S. circuit court, eastern district of Texas, at Galveston.

Report of Special Master Edward T. Austin on the claim of John W. Norris against N. A. Cowdrey as receiver of the Galveston, Houston & Henderson R. R.

The claimant in this case claims of the receiver the value of one hundred and thirty plows shipped on the road on the 24 January, 1870, the property of claimant, and not delivered.

The master finds from the testimony, the delivery to and the
202 loss of the plows by the road to be fully proven; also, that the plows were worth 8.50 each at Galveston; that the freight and charges on the plows to Galveston were paid by the road.

He therefore finds that there is due from N. A. Cowdrey, receiver, to John W. Norris on the 1st February, 1870, the sum of $1,095.87, less the freight & charges paid by the road, $175.65, to wit, the sum of $920.22 with 8% interest from that date to 23 February, 1872, 2 years & 23 days, $151.85. Total sum due this date, $1,072.07.

The master reports to the court—
The testimony taken before him.
The railroad receipt for the plows attached to petition.
The bill lading for plows consigned to the r. r.
The testimony of J. T. Griffin.
The testimony of Charles Fowler.
The testimony of J. H. Grisham.
The testimony of J. M. Forshey, with the record of the proceedings before the master.

Respectfully submitted.

EDWARD T. AUSTIN,
Special Master.

203 U. S. circuit court, eastern district of Texas, at Galveston.
Chancery No. 1.

In the matter of the claims of John W. Norris against N. A. Cowdrey, receiver, for lost freight, referred to Master Austin, by order of court dated 21st Dec'r, 1871.

On the 10th of February the parties appeared before the master and

fixed the 23rd Feb'y, at 4 p. m., to try this case, and subpœnas were ordered for witnesses.

On 23d Feb'y, 1872, the matter was attended by W. H. Stewart, representing claimant, and Robt. Colwell, esqr., representing the receiver.

Claimant introduced in evidence copy of a bill lading from G., H. & H. R. R., attached to petition dated Jan'y 24th, 1870, calling for 130 ploughs, marked J. S. & Co.; also bill lading from Morgan's line, dated Jan'y 10, 1870, for 130 ploughs, mark' J. S. & Co., care G., H. & H. R. R. Co., Galveston, for John Schacky & Co., Brenham.

204 Claimant introduced Mr. J. T. GRIFFIN, who was sworn, and testified:

The firm of John Schaike & Co., at Brenham, was composed of John Shaike & myself.

The plows were shipped to us on consignment, and belonged to John W. Norris. The plows were never received at Brenham. I have made diligent inquiry for the plows up and down the road, and also examined the books at the R. R. depot. I have never found the plows; they are lost. I put the matter in the hands of Mr. Berry, the lost-freight agent of this road, and he could not find them. The plows were worth here the amount charged in the bill here—eight and a half dollars currency, at Galveston. The largest sizes were priced at Brenham at ten dollars. The lot was worth ten hundred and ninety-five $\frac{87}{100}$ dollars. The railroad has never paid for the plows, and no settlement has been made for the plows. Mr. Berry asked me, from time to time, for further
205 time to look for the plows, but finally came to me and told me it was no use to look for them. Mr. Berry never denied the receipt of the plows by the road. He told me that the plows were lost, and it was no use to look for them. I have been to the railroad office for a settlement, but did not find the agent.

Questioned by receiver:

I was a commission-merchant at the time of the loss of the plows, at Brenham & Hempstead. The Brenham house had no interest in the Hempstead house. I received some plows at Hempstead, but none of this lot. The plows I received at Hempstead were marked J. T. Griffin & Co. Berry was recognized as the agent of the road, up and down the road. Berry had cards printed as agent of this road. I knew him very well. The first I knew of his being the agent of the road, he called upon me for some papers, as agent, for the purpose of look-
206 ing up the freight. I was not in Galveston when the plows arrived in Galveston. I was governed in the valuation by the invoice.

Questioned by claimant:

Did not receive any of the lot of 130 plows at Hempstead. I was frequently in Galveston in 1870, sometimes twice a month, and after January, 1870.

Claimant introduced Capt. CHARLES FOWLER:

I was agent of the Morgan line, between New Orleans and Galveston, at the date of the bill lading. The plows were delivered by the ship to the G., H. & H. R. R.

Questioned by receiver:

I do not know whether the R. R. paid the charges on the plows, without looking at book. (After inspection of book:) The R. R. paid the

freight on the plows from New Orleans, also the charges in addition to the freight—the amount marked on the bill lading, 91.25.

Questioned by claimant:

207. Ormerod receipted for the plows on the 24 Jan'y, 1870. Ormerod was agent for the road in co. with Ricker, and receipted for the road for freight and paid our charges.

Other plows were arriving at this time, but I have no recollection as to where they were shipped.

Eighty plows came on board same ship, marked J. T. G., so it appears on my book.

Claimant introduced J. H. GRISHAM:

I was with Capt. Fowler and wrote out the receipt, and Ormerod receipted for the goods and signed the receipts. The plows were delivered to the G., H. & H. R. R. There were eighty other plows came at same time, marked J. T. G.

Questioned by receiver:

I do not recollect the particular occur'ence more than any other, except from the entries. The receipt given by the R. R. to the ship did not specify to what point the plows were to go. The plows were
208 consigned to the G., H. & H. R. R., and the road should have had a copy of the bill lading; one is kept by ship, one by shipper, and one sent to consignee.

Claimant introduced J. M. FORSHEY, who was sworn and testified:

I recollect only the trace of these plows on the books as they passed through the office. They passed into the hands of another clerk. I heard only of the trace of the plows.

Parties agreed that freight on plows from New Orleans to Galveston by Morgan's boats is per plow; total charges, $175.65,

Testimony closed Feb'y 23rd, 1872.

EDWARD T. AUSTIN, *Master.*

The foregoing six pages contain all the testimony taken before me in this cause.

Feb'y 23d, 1872.

EDWARD T. AUSTIN, *Master.*

(The foregoing report endorsed as follows, to wit:) "Report of Special Master Edward T. Austin. Filed Feb'y 26th, 1872. Levi Jones, clk."

209 The following is a true copy of the bill of lading referred to in the testimony of claimant of date Jan'y 10th, 1870:

[Morgan lines U. S. mail steamers—New Orleans and Texas; Chas. A. Whitney & Co., agents.]

Shipped in apparent good order and well-conditioned, by Jno. W. Norris, on board steamship W. G. Hewghes, of the Morgan line, whereof is master, now lying in the port of New Orleans and bound for Galveston, the following articles, shipped, marked, and numbered as below, to be carried on said steamship (with leave to tranship to any other steamship of the line) to the port of Galveston, in like apparent good order and condition, (the acts of God, country's enemies, fire at sea

or in port, accidents to and from machinery, boilers, or steam, restraint of Government, robbers, pirates, collisions, and all other and every danger of the seas, rivers, and steam navigation of whatever nature or kind soever, excepted, and with liberty to lighten, to cross all bars, to call at any port or ports, to sail with or without pilot, and to tow and assist vessels in all situations,) and to be there delivered, within reach of the steamship's tackle, unto , as per margin, or his or their assigns, upon the payment by him or them of freight at the rate of charges, $91.25, with primage and average accustomed.

It is expressly stipulated that the articles named herein shall be at the risk of the owner, shipper, or consignee thereof as soon as delivered from the steamer's tackle, and they shall be received by consignee, package by package, as so delivered, and if not taken away without delay, they may (at the option of the steamer's agent) be sent to store, permitted to lay where landed, or returned to port of shipment, at expense and risk of shipper or consignee.

It is also stipulated that in case any claim shall arise against said steamship for loss or damage to within merchandise while on the voyage, such claim (in all cases to be based upon the value of the articles at the port of shipment upon the date thereof) shall be preferred at the office of the steamer's agent within three days after the delivery of the merchandise; failing in which, such loss or damage shall be deemed waived, and the steamship and owners discharged therefrom.

It is also stipulated that in case the steamship shall be detained at any of the ports she enters at the quarantine, and there discharge the articles named herein, that all risk and liability to the steamship or her owners shall cease, and her obligations under this bill of lading be deemed to have been fully accomplished when the articles shall have been delivered from the steamer's tackles, and all risks and expenses incurred thereafter shall be on account of the aforesaid owner, shipper, or consignee.

It is also stipulated that the steamship, and the owners thereof, shall not be liable for loss or damage from leakage, rust, heat, breakage, or natural decay of goods, or damage to the packages from said causes, or for unavoidable exposure to weather, and not to be responsible for gold, selver, precious stones, or metals, jewelry, nor treasure of any kind, unless bills of lading in which the value is stated are signed therefor, weight, contents, and value unknown. No bill lading signed for a sum less than $1.00.

All goods to and from Lovacca subject to lighterage to and from Indianola at owner's risk, the expense of lighterage to be divided between steamship and shippers or consignees of goods.

In witness whereof the agent of said steamship hath signed bills of lading, all of this tenor and date, one whereof being accomplished, the others to stand void.

New Orleans, January 10th 1870.

Marks.	Articles.
J. S. & Co.	130 plows.
B.	2 bdles. cont'g 50 points.

Care G. R. R. Co., Galveston,
For John Schacky & Co., Brenham.

A. C. JAMES.

(The foregoing endorsed as follows, to wit:) "Bill lading W. G. Hewes, Jan'y 10, '70."

213 *Report of master receiver.—From rules and orders, Feb'y 26th, 1872.*

N. A. COWDREY & OTHERS
vs.
GALVESTON, HOUSTON AND HENDERSON RAILroad Co. and others.

This day came Edward T. Austin, special master in chancery in this cause, and files herein his report on the claim of John W. Norris against the receiver, N. A. Cowdrey.

Feb'y 20th, 1872.

Attest:

LEVI JONES, *Clerk.*

Motion for order confirming master's report.—Filed April 1st, 1872.

APRIL RULES, *Monday, April 1st*, 1872.

In the circuit court of the United States for the eastern district of Texas.

N. A. COWDREY AND OTHERS, COMPLAINANT',
vs.
THE GALVESTON, HOUSTON AND HENDERSON Railroad Company and others, defendants. } In chancery.

214 In the matter of the claim of John W. Norris against the receiver, N. A. Cowdrey, for lost freight.

Comes the said John W. Norris, by his solicitors, Spencer & Stewart, and moves that a rule be entered confirming the report of the master, Edward T. Austin, filed in this court 26th Feb., 1872, showing that there is due to said Norris for lost freight the sum of $1,072 $\frac{7}{100}$, one month having elapsed since the filing of said report and no exception thereto being made.

SPENCER & STEWART,
Solicitors for John W. Norris.

(The foregoing "motion" endorsed as follows, to wit:) "Motion for order confirming master's report. Filed April 1st, 1872. Levi Jones, clerk."

Master's report confirmed.—From the minutes May term, May 6th, 1872.

N. A. COWDREY AND OTHERS, COMPLAINANTS,
vs.
THE GALVESTON, HOUSTON & HENDERSON Railroad Company & others, defendants. } Ch. No. 1.

215 In the matter of the claim of John W. Norris.

This cause came on to be further heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

That John W. Norris do have and recover of and from N. A. Cowdrey, receiver of the Galveston, Houston & Henderson Railroad Company the sum of one thousand and eighty-six dollars and eighty cents, together with his costs incurred, and this decree shall draw eight per cent.

per annum interest; and it is further decreed that the report of Edward T. Austin, special commissioner, be confirmed, and that said Austin be allowed for his services as master twenty dollars, to be taxed in the costs, and that this decree may be enforced by execution.

Order requiring James to pay.—From the minutes, Dec'r term, Feb'y 14, '74.

216 Intervention in chancery cause No. 1, N. A. Cowdrey & others vs. Galveston, Houston & Henderson Railroad Co. & others.

JOHN W. NORRIS
vs.
N. A. COWDREY, RECEIVER, & F. P. JAMES.

This cause came on to be heard at this term, the petitioner, John W. Norris, appearing by his counsel, and the said Cowdrey, receiver, and F. P. James, by their counsel; and thereupon the court, having examined into all the facts of this case, and having heard the arguments of counsel thereon, and being now fully advised, it is ordered that Frederick P. James, the purchaser of the Galveston, Houston & Henderson Railroad, pay into court, for the use and benefit of said petitioner, the sum of one thousand and eighty-six dollars and eighty cents, with interest at eight per cent. per annum from May 6th, 1872, that being the amount found due said petitioner by the decree of this court of date May 6th, 1872, and for which said James is bound on his bond. It is further or-
217 dered that said James pay into court all costs incurred in this behalf.

To which ruling and order of the court the defendants by their counsel except, and give notice of appeal to the next term of the Supreme Court of the United States.

218 *Leave to file a petition on behalf of Robert Hoffman.—From the minutes Dec'r term, Dec'r 20th,* 1871.

N. A. COWDREY AND OTHERS
vs.
G., H. & H. R. R. CO. & OTHERS. } Ch. No. 1.

On motion of J. L. H. Scott, attorney for Robert Hoffman, he has leave to file a petition on behalf of said Hoffman, setting up a claim against the receiver for lost freight.

Petition of R. Hoffman against the receiver.—Filed December 23rd, 1871.

In the United States circuit court in and for the eastern district of Texas, sitting at Galveston.

N. A. COWDREY AND OTHERS
against
THE GALVESTON, HOUSTON & HENDERSON Railroad and others. } No. 1. In equity.

To the honorable judges of the above-named court:

The petition of Robert Hoffman, who resides at the town of
219 Brenham, in the State of Texas, humbly complaining of N. A. Cowdrey, the receiver heretofore appointed in this cause, respectfully showeth unto your honors—

That on the 10th day of February, 1870, the said receiver, in the course of his duties as such, received at Galveston, from B. W. Le Compt, on board the Galveston, Houston and Henderson Railroad, thirty-six (36) plows, marked "R. H.," to be delivered within a reasonable time (say ten days from the time of receiving the same) to your petitioner at the said town of Brenham, and to this effect by one Sargent, his agent for this purpose, the said receiver executed and delivered his bill of lading; and thereupon undertook to deliver said plows according to the terms thereof. But your petitioner further showeth that though the time for delivering said plows has long since passed, and though the said receiver has been often requested so to do, he has hitherto wholly refused and failed in any manner to deliver to your petitioner the plows referred to, except twenty-nine thereof, (29,) leaving seven (7) of said plows, of the value of $54.82, as shown in the bill of items hereto appended, marked "A," wholly undelivered and unaccounted for.

220 Your petitioner further showeth that on the 7th day of February, 1870, the said receiver received from the said Le Compt, at Galveston, on board the said railroad, sixty-two other plows of the same mark, and to be delivered to your petitioner at the said town of Brenham, and by his said agent, Sargent, executed and delivered his bill of lading to that effect; except that by clerical mistake the word "Bryan" was inserted in said bill of lading as the place of delivering said sixty-two plows, instead of Brenham, as was intended, to which last-named place they were in fact shipped, and are delivered according to the true intent of the parties to said bill of lading.

Your petitioner further showeth that he has often requested the said receiver to deliver or account for the seven (7) plows shown above to be undelivered, or to pay the value thereof; but that he has hitherto failed to do so in any manner, saying that he has already delivered at Brenham more plows than he was required to deliver by the bill of lading to that place, (first above referred to,) but in *but in* nowise

221 accounting for the seven (7) plows, (missing as above shown,) either at Brenham, where they were to be delivered, nor at Bryan, to which place he says they were shipped, nor at any other place.

Your petitioner further sheweth that he is the owner of said seven (7) missing plows, and that their value is as stated in the bill of items above referred to; that he has received no compensation for their loss, and that the said receiver is liable to pay him their said value.

And he prays that, upon due consideration of his petition, the said receiver be ordered to pay the said value of said plows to your petitioner and the costs of this petition, and for such other and further orders in and about the premises as are equitable, right, and in accordance with the usage of this hon. court in like cases.

J. Z. H. SCOTT,
For the Petitioner, Robert Hoffman.

222 A.—*Bill of items referred to in the foregoing petition.*

The receiver of the Galveston, Houston and Henderson Railroad, to R. Hoffman, Dr.

For 0—5 plows, 9.00		$45 00
1—2 " 10.00		20 00
		65 00
Discount 33⅓%		21 66
		43 34

Expenses and freight to Galveston	6 50
	49 84
10% damages	4 98
Due	$54 82

GALVESTON, *February 10th*, 1870.

(The foregoing petition and bill of items marked "A," endorsed as follows, to wit:) "No. 1. In equity, U. S. circuit court. N. A. Cowdrey and others against The Galveston, Houston & Henderson Railroad and others." "Petition of R. Hoffman against receiver." "Filed Dec'r 23, '71, Levi Jones, clk."

223 *Agreement as to reference of claim of Robert Hoffman, and order thereon.—Filed January 8th, 1872.*

In the circuit court of the United States in and for the eastern district of Texas, at Galveston.

N. A. COWDREY AND OTHERS *against* THE GALVESTON, HOUSTON AND HENDERSON Railroad and others. } No. 1. In equity.

In the matter of the petition of Robert Hoffman against the receiver, N. A. Cowdrey, (for freight alleged to have been lost,) filed December 23rd, 1871, it is agreed by the parties interested that an order be entered in the above-mentioned cause, referring said petition to E. T. Austin, esqr., master in chancery, for examination and report; that, upon notice of time and place of hearing, said petition may be heard before said master; and that further notice and process therein is herein specified be waived.

J. Z. H. SCOTT,
For Petitioner, Hoffman.
N. A. COWDREY,
Receiver,
By ROBERT COLWELL,
Agent.

224 *Judge's order on the foregoing agreement.*

Upon filing of the above agreement in the United States circuit court for the eastern district of Texas, at Galveston, the clerk of said court will enter the order as stipulated in the agreement.

T. H. DUVALL, *U. S. Judge.*

(The foregoing agreement endorsed as follows, to wit:) "Ch., No. 1." "N. A. Cowdrey & others v. Galveston, Houston and Henderson Railroad Co. & others." "Agreement as to reference of claim of Robert Hoffman and order thereon." "Filed Jany. 8th, 1871. Levi Jones, clk."

Affidavit of Robert Hoffman.—Filed January 8th, 1872.

THE STATE OF TEXAS,
County of Washington:

Before me, the undersigned authority, duly authorized, in and for the

above-named county and State, to administer oaths and give certificates thereof, this day came ROBERT HOFFMAN, to me personally
225 known, who, being by me first duly sworn, upon his solemn oath says: That he is the owner of the ninety-eight plows referred to in the two bills of ladings hereto attached, dated, respectively, Feb'y 10th, 1870, and Feb'y 7th, 1870; that all of said plows were shipped on board the Galveston, Houston & Henderson Railroad, to be delivered to this deponent at Brenham, in the above-named county of Washington, but that by mistake the word "Bryan" was inserted in the bill of lading dated Feb'y 7th, 1870, instead of "Brenham," as the place where said plows were to be delivered.

That all of the sixty-two plows referred to in the last-mentioned bill of lading were, in fact, shipped to and received by this deponent at the said town of Brenham, according to the true intents of the parties to said bill of lading, notwithstanding the mistake above shown. That only twenty-nine of the (36) plows refered to in the bill of lading dated Feb'y 10th, 1870, have ever been received by this deponent or any one authorized to receive them for him, either at the said town of Brenham or elsewhere.

That there are seven of said plows still undelivered and wholly
226 unaccounted for by the receiver of the Galveston, Houston & Henderson Railroad, the value of which is, as stated in a bill of items hereto attached, marked "A," the sum of $54.82, (fifty-*two* $\frac{82}{100}$ dollars,) for the loss of which this deponent has not received any manner of compensation, but says the said sum of money is due him by reason of the premises from N. A. Cowdrey, the receiver, in charge of said railroad at the dates of said bills of lading.

R. HOFFMAN.

STATE OF TEXAS,
County of Washington:

Before me, Stephen A. Hockworth, justice of the peace and notary public of Washington County, and State of Texas, this day personally appeared R. Hoffman, a merchant of the city of Brenham, and a citizen of the aforesaid county and State, and to me well known, who upon oath states that the facts set forth in the above instrument of writing true and correct, and that he signed the same for the purposes and considerations therein expressed.

227 In testimony whereof witness my hand, at office in the city of Brenham, on this the 6th day of June, A. D. 1872.

[SEAL.] STEPHEN A. HOCKWORTH,
J. P. & N. P., W. Co.

The receiver of the Galveston, H. & H. R. Co., to R. Hoffman, Dr.

The receiver of the Galveston, H. & H. R. R. Co., to R. Hoffman, Dr.

For 0—5 plows, 9.00	45	00
1—2 " 10.00	20	00
	65	00
Discount 33⅓ %	21	66
	43	35
Expense & freight to Galveston	6	50
	49	84

10 % usual damages..... 4 98

Due..... $54 82

GALVESTON, *Feb'y 10th*, 1870.

A.—*Bill of items referred to in the attached affidavits.*

228 *Bill of lading of Feb'y 7, '70.—Original.*

No. .] GALVESTON, *Feb'y 7th*, 1870.

Received in good order from B. W. Le Compt, agent on the Galveston, Houston & Henderson Railroad, the following-named articles, to be delivered in like good order to R. Hoffman, at Bryan:

Marks: R. H. Articles from Harlan, 102. 62 plows. Chg., 82.25.

SARGENT.

Bill of lading of Feb'y 10, '70.—Original.

No. .] GALVESTON, *Feb'y 10th*, 1870.

Received in good order from B. W. Le Compt, agent on the Galveston, Houston and Henderson Railroad, the following-named articles, to be delivered in like good order to R. Hoffman, at Brenham:

Marks: R. H. Articles from Harlan, 102. 36 plows.

SARGENT.

229 Endorsements on the foregoing bill of lading of date Feb'y 10th, 1870:

I certify that only seventeen (17) plows were received on the within B. L. for R. Hoffman.

R. L. UPSHAW, *Agt.*,
Per COMPTON.

I certify that only twelve plows were received on the within B. L.

JOHN WATSON.

I certify the above statement to be correct, and that no plows were received for R. Hoffman since the 19th March, according to which they are short seven (7) plows, by books at this station.

By COMPTON, *Agt.*

BRENHAM, *Oct. 31st*, 1870.

The foregoing affidavit endorsed as follows, to wit: "In U. S. circuit court. In equity." "N. A. Cowdrey and others against The Galveston, Houston & Henderson Railroad and others." "In the matter of the petition of Robert Hoffman against N. A. Cowdrey, the receiver in the above cause. Affidavit of Robert Hoffman." "Filed Jan'y 8th, 1872. Levi Jones, clk."

230 *Report of master.—Filed January 20th, 1872.*

United States circuit court, eastern district of Texas, at Galveston.

N. A. COWDREY ET AL.
vs.
GALVESTON, HOUSTON AND HENDERSON Railroad Co. & others. } Chancery, No. 1.

In the matter of the claim of Robert Hoffman vs. N. A. Cowdrey, receiver. Filed 23d Dec'r, 1871. Referred to Edward T. Austin, master, by order of court of 23 Dec'r, 1871, and agreement of parties.

REPORT OF MASTER.

On the 8th day of January, 1872, on due notice, the parties appeared before me, at my office, in Galveston, the claimant being represented by J. Z. H. Scott, and N. A. Cowdrey by Robt. Colwell, esqr.

The claimant produced a bill lading dated Feb'y 10, 1875, for thirty-six plows from the G., H. & H. R. Road, to be delivered at Bren-
231 ham, to the claimant, and his sworn statement that but twenty-nine of said plows had been delivered, and that the value of the seven plows not delivered was fifty-two dollars and $\frac{82}{100}$ ($52.82.)

The receiver offered no evidence of the delivery of the plows sworn to be missing and not delivered as per bill lading.

The master finds from the evidence, and so reports, that thirty-six plows were received by the railroad while in charge of N. A. Cowdrey, receiver, and that but twenty-nine thereof were delivered, and that the value of the seven plows not delivered was fifty-two $\frac{82}{100}$ dollars, and that the receiver is liable to the claimant, Robert Hoffman, for the said sum of fifty-two $\frac{82}{100}$ dollars.

EDWARD T. AUSTIN,
Special Master.

The foregoing report endorsed as follows, to wit: "N. A. Cowdrey et al. vs. G., H. & H. R. R. Co." "Chancery, No. 1." "Claim of Robert Hoffman." "Report of master." "Filed Jan'y 20, 1872. Levi Jones, clk."

232 *Report of master received.—From rules & orders January 20th, 1872*

N. A. COWDREY AND OTHERS
vs.
GALVESTON, HOUSTON & HENDERSON RAILroad Company and others. } Ch., No. 1.

This day came Edward T. Austin, esqr., special master in this cause, and files herein his reports upon the claims of Buck & Levy and Robert Hoffman against the receiver, referred to him by the order of the court.

Jany. 20, 1872.

Attest:

LEVI JONES,
Clerk U. S. Circt. Court, E. D. T., G.

Master's report confirmed.—From the minutes, Decr. term, Feby. 21st, 1872.

N. A. COWDREY AND OTHERS
vs.
GALVESTON, HOUSTON AND HENDERSON R. R. Co. & others. } Ch., No. 1.

In this cause came on to be heard this day the petition of Robert
233 Hoffman against the receiver, N. A. Cowdrey, filed December 23rd, 1871, upon the master's report thereon, and the prayer of said petition; and it appearing to the court that the said report is correct, and that no exceptions have been filed thereto by either party, it is ordered that the same be in all things confirmed, and the prayer of said petition is granted, and the receiver, N. A. Cowdrey, is ordered to pay the sum of fifty-two dollars and eighty-two cents ($52.82) to the petitioner, Robert Hoffman, and all costs incurred in this application, to be taxed by the clerk.

Judgment vs. James.—From the minutes, Decr. term, Feby. 14, '74.

ROBERT HOFFMAN
vs.
N. A. COWDREY, RECEIVER, AND F. P. JAMES. } 76.

Petition in chancery, cause No. 1. N. A. Cowdrey and others vs. Galveston, Houston & Henderson Railroad Company et al.

This cause came on to be heard at this term, the petitioner,
234 Robert Hoffman, appearing by his attorneys, and the said Cowdrey, receiver, and F. P. James appearing by their attorney; and thereupon, the court having examined into all the facts upon which the petitioner's claim is based, and being fully advised in the premises, having also heard arguments of counsel, it is considered and adjudged by the court that Frederick P. James, the purchaser of the Galveston, Houston and Henderson Railroad, pay into court, for the use and benefit of the petitioner herein, the sum of fifty-two dollars and eighty-two cents, with interest thereon, at the rate of eight per cent. per annum, from the 21st day of February, 1872, and all costs in this behalf incurred, being the amount decreed to petitioner by this court on said last-named date, and for the payment of which said James is bound on his bond.

To which ruling and orders of the court the defendants, by their counsel, except', and gave notice of appeal to the next term of the Supreme Court of the United States.

235 *Petition of Moody & Jemison to recover lost freight.—Filed Jany. 26th, 1872.*

N. A. COWDREY ET ALS.
vs.
G., H. & H. R. R. COMPY., } Ch., No. 1. In equity.

Suit pending for special purposes in the circuit court of the U. S. including the eastern district of Texas, at Galveston.

To the hon. judges of the circuit court as aforesaid:

The petition of W. L. Moody and E. S. Jemison, merchants, now and heretofore during the past two years doing business in the city and

county of Galveston, State of Texas, under the firm-name and style of Moody & Jemison, and both residents of said city, county, and State, complaining of N. A. Cowdrey, who is now acting, un' 'ers of your hon. court, as receiver in the above entitled and numbered cause, respectfully showeth unto your honors:

I. That your petitioners are and have been commission-merchants as aforesaid, doing business as aforesaid, in the said city of Galveston, since the 1st of October, and before, in the year A. D. 1871, and
236 as such received for account of themselves large amounts of cotton in bales, as well as large amounts of cotton to be sold for account of others, and the business of said firm of Moody and Jemison has been during all of the time aforesaid to receive and dispose of cottons for account of themselves and others.

II. That in said capacity the said firm of Moody & Jemison had large number of bales of cotton shipped to them from the interior of the State of Texas, and during said time, to wit, from the 1st day of November, A. D. 1870, to the present time, the G., H. & H. R. R. Comp'y, as common carrier, doing business by permission and under the authority of your honorable court, acting by and through the agency of the said N. A. Cowdrey, and his agents and servants, as in law allowed, did receive for account of your petitioners a large number of bales of cotton, and for a valuable consideration the said G., H. & H. R. R. Co., through the said N. A. Cowdrey, as receiver, agreed, promised, and undertook
237 to safely convey the same from Houston & Harrisburg, at which points, in the county of Harris, in the State of Texas, the said cotton was received by said parties, to your petitioners in the city and county of Galveston, State of Texas; that the said cottons thus received and agreed to be delivered as aforesaid were marked as set out in schedule hereto attached, marked "A," and the dates and parties from whom received are likewise set out in said Schedule A, as well as therein and thereby exhibited a tabular history and statement of the mode and time of delivery to the said G., H. & H. R. R. Co. of said cotton thus received.

III. That the said Schedule A shows that the said G., H. & H. R. R. Co. received cotton as aforesaid for account of your petitioners to the extent of seventy-five bales, (75,) and your petitioners aver that such was and is the truth.

IV. That each bale of said cotton weighed 500 pounds, as usually averaged.

V. That the said cotton is and was of the market-value and
238 worth the sum of 18 cents per pound in gold coin of the U. States —average grades now selling freely at 18¼ @ 18½.

VI. That gold coin is the currency for which said cotton as an article of commerce is and has been uniformly sold in the State of Texas.

VII. That the said G., H. & H. R. R. Co., acting through the said receiver, N. A. Cowdrey, as aforesaid, although having received the said cotton as carrier as aforesaid, and having agreed and promised as aforesaid to deliver the same as aforesaid to your petitioner, for a valuable consideration thereto moving, have hitherto wholly failed, neglected, and refused to deliver the same, or any part thereof, but, on the contrary, persist in now withholding the same, notwithstanding frequent demand thereunto made by your petitioners.

VIII. And your petitioners aver that they now hold and here exhibit in schedule marked "B," copy of the receipt and acknowledgment of said G., H. & H. R. R. Co., the original of which was duly executed
239 by their legally authorized agent, R. H. Williams, showing the

fact that the said cottons, as claimed in Schedule A, were received as aforesaid by said G., H. & H. R. R. Co., and agreed to be delivered to your petitioners at Galveston.

IX. Your petitioners say that by reason of the premises the said G., H. & H. R. R. Co. became obligated and promised to pay, by and through the said receiver, N. A. Cowdrey, the full value of said 75 bales of cotton, to wit, the sum of six thousand seven hundred and fifty $\frac{00}{100}$ gold dollars of U. S. coinage ($6,750.00, gold) whenever thereunto demanded, which said demand has frequently been made and always disregarded, and for which judgment is asked.

Wherefore the prayer that your hon. court will make such order and decree for the payment of the said sum of $6.750.00, gold, in the premises as may seem to you equitable and just. Prayer for service and process as necessary and proper to bring the said receiver into court,
240 and for costs of this proceeding.

W. L. MOODY,
Of the firm of Moody & Jemison.

McLEMORE & HUME,
Solicitors.

STATE OF TEXAS,
County of Galveston :

On the 20th day of January, A. D. 1872, before me personally appeared W. L. Moody, one of the firm of Moody & Jemison, and made oath that he has heard read the above & foregoing petition, and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated to be on his information and belief, and that as to those matters he believes it to be true.

Witness my hand and the impress of my official seal, at my office, in the city of Galveston, this 20th day of January, A. D. 1872.

[SEAL.] WM. R. JOHNSON,
Notary Public for Galveston County.

241 N. A. COWDREY ET ALS. } Ch., No. 1.
vs.
G., H. & H. R. R. CO. ET AL. }

It is hereby agreed and stipulated that this petition shall be filed as under the permission of the court, hereby waiving service and process. And it is further agreed the matters in controversy may be referred by the hon. court to Edwd. T. Austin, as a master, who shall be instructed to make report thereon in due time, after giving notice of time and place at which the parties may be heard with their testimony.

N. A. COWDREY, *Receiver*,
By ROBT. CALWELL, *Agt.*
McLEMORE & HUME,
Solicitors for Complts.

GALVESTON, TEXAS, *Jan'y 20th*, 1872.

Order referring petition to Edward T. Austin, master.

The foregoing petition endorsed as follows, to wit : " Ch., No. 1, U. S. dist. court, E. D. of Tex. In chambers. Austin, 24 Jan'y, 1872. It is ordered that the petition of Moody & Jemison, hereto attached, be filed by the clerk of said court and regularly docketed, and that the
242 matters in controversy between the parties thereto as therein exhibited, be referred to Edward T. Austin, at Galveston, as special master, for examination and report. And the said master, on receiving information hereof, is directed to give five days' notice of this order, and

the time and place of said examination, when and where the said parties may be heard with their testimony respecting the issues presented by said petition; and the said master is directed to make a full report upon the issues thus submitted to him, and file the same in said court on or before the 12th day of February, 1872.

"T. H. DUVAL,
"*U. S. Judge.*

"Filed Jan'y 26th, 1872. Levi Jones, clk."

243 *Schedule A referred to in petition.*

GALVESTON, *January 1st*, 1872.

The G., H. & H. R. R. C. to Moody & Jemison, for cotton short delivered from Houston and Tex. Cent. R. R.

Marks.	No.	Date C. R. R. W. B.	C. R. R. No. W. B.	C. R. R. No. W. B.	Date W. B.	No. cars.
		1870.				
J. S	1	Nov. 25	122	73	Nov. 25	C. B. 240
B. & B	2	Dec. 8	48	31	Dec. 8	G. B. 110
H. & K	1	" "	50	34	"	C. B. 92
T. C	1	" "	44	51	12	G. B. 137
F. W. S	2	" "	"	"	"	" "
L. C. C	1	" "	"	"	"	" "
W. B. J	1	" "	"	"	"	" "
J. F. M	1	" 9	51	36	9	C. flat 112
(M)	1	" "	58	39	"	C. B. 454
P. M	1	" 10	62	43	10	" 431
W. H	1	" "	65	41	"	" 358
J. W. T	1	" "	"	42	"	" 208
H. & M	1	" "	68	46	"	C. F. 284
H. W	1	" "	65	41	"	C. B. 358
J. & J. P. H	1	" 13	93	58	13	C. F. 277
S. & B	1	" 16	107	66	17	C. S. & K. 95
F. W. S	1	" "	"	"	"	" "
(W) J. F	2	" "	110	"	"	C. F. 155
H. R	2	" 17	115	67	"	" 58
L. G	1	" 24	149	88	27	C. B. 49
B. & B	1	" 30	185	104	31	" 434
G. S	1	" 27	157	89	27	C. F. 290
		1871.				
G. W	3	Jan'y 2	4	4	Jan'y 3	" 235
W. T. W	1	4	20	11	5	C. B. 411
D. D	2	9	47	30	9	C. F. 289
J. A	1	10	63	42	11	C. B. 76
T. S. B	1	11	79	49	"	C. flat. 5
A. & M	2	"	40	40	"	" 46
Vanz	1	12	78	56	12	G. B. 127
Storey	1	"	"	"	"	" "
T. J. T	1	14	88	63	14	C. B. 16
J. R	1	21	129	89	21	C. F. 289
J. M. F	1	"	"	"	"	" "
G. E. B	1	"	"	"	"	" "
(W M)	1	"	"	"	"	" "
J. H. O. H	2	17	104	73	18	C. F. 249
" W	1	"	"	"	"	" "
Storey	4	14	88	63	14	G. B. 160
Vanz	5	"	"	"	25	" "
Pressler	1	25	153	105	"	G. B. 13
(L)	1	"	"	"	28	" "
D. D	1	28	176	116	30	C. B. 155
D	1	30	187	121	Feb'y 1	C. B. 367
H. W	1			1	4	C. F. 154
S. F. (A)	1	31	193	20	10	C. F. 46
J. B. P	1	Feb'y 4	28	42		C. F. 247
"Over"	2 b.c.	10	64			

244 SHEET B.

Marks.	No.	Date C. R. R. W. B.	No. C. R. R. W. B.	No. G. R. R. W. B.	Date G. R. R. W.	No. car.
Forward	62 b. c.	1871.		105	Feb'y 25	C. B. 418
B. P. B	2	Feb'y 24	163	40	Mar. 9	" 345
Storey, F. & K.	1	March 9	55	128	" 29	" 419
S. Fields	4	" 29	178	"	" "	" "
A	1	" "	"			
	70 b. c.*					

*Weighing, avge., 500 ea., 35,000 lbs., @ (gold) 18 cts., $6,300.00, gold.

245 GALVESTON, *Jan'y 1st*, 1872.

The G., H. & H. R. R. Co. to Moody & Jemison, to cotton short del'd from G., H. & S. A. R. R.

1870.

Nov'r 12. N J P . 1 Harrisburg, W. B. 17

30. H. C. 1 " " 48

Dec. 10. J. S. 2 " " 25

17. W. W. K. 1 " " 36

5 B. C., wg. 2,500 lbs., gold, 18 cts.

Gold 450 00

Brt. forward 6,300 00

Gold $6,750 00

246 Copy.] *Schedule B referred to in petition.*

OFFICE OF THE H. & T. C. R. WAY CO.,
Houston, Tex., Sept. 19th, '71.

Station.	Date.	W. B.	Car.	No. B. C.	Marks.	Houston to Galves'. W. B.	Car.	Date.	Consignees.
Brenham	Jan'y 9	47	C. F. 289	5	D. D.	30	289	Jan'y 9	Moody & Jemison.
"	25	153	G. B. 13	1	Presler.	105	13	25	"
"	"	"	C. B. 242	1	4	"	"	"	"
Calvert	17	104	C. F. 249	3	H. J. H. O.	73	249	18	"
"	"	"	"	1	H. J. H. O.	"	"	"	"
Bremond	28	176	G. B. 155	4	D. D.	116	158	28	"
Navasota	11	60	C. F. 46	2	A. & M.	40	46	11	"

Recd. the above 17 B. C. from the H. & T. C. R. Way Co., & forwarded the same to Galveston, as specified in statement.

(Sig'd) R. H. WILLIAMS,
Agt. G. R. R.

247 Copy.] HOUSTON & TEXAS CENT. R. W. CO. FRT. OFFICE,
Houston, Sept. 6th, 1871.

Date.	Station.	W. B.	Car.	No. B. C.	M'ks.	Houston to Galv'n. W. B.	Car.	Date.	Consignees.
Dec. 17	Brenham...	115	C. F. 58	2	H. R.	67	58	Dec. 17	Moody & Jemison.
Jany. 21	Kosse.....	129	" 289	1	(N M)	89	289	Jany. 21	"
Mch. 9	"	55	C. B. 345	3	F. K. Storey.	40	345	Mar. 9	"
29	Calvert....	178	C. B. 419	13	S. Field. ◇A	128	419	" 29	"
"	"	"	"	6	S. Fields.	"	"	" "	"
"	"	"	"	5	10 S. Fields.	"	"	" "	"

Recd. the above B. C. from the H. & T. C. R. Way Co., and forwarded the same to Galveston, as specified in statement.

(Sig'd) R. H. WILLIAMS,
Agt. G., H. & H. R. R. Co.,
Per R.

248 Copy.] A.

Statement of receipt and shipment of 213 *bales of cotton via H & T. C. R. Way Co. and G., H. & H. R. R. ac. Moody & Jemison, Galveston.*

Date.	W. B.	Car.	Station.	No. B. C.	Marks.	Houston to Galv'n. Date.	W. B	Car.	Rem'ks.
1870.									
Decr. 8	44	C. B. 202	Brenham ..	1	T. C.	Dec. 12	51	G. B. 137	
"	50	C. B. 92	Kosse	2	H. K.	" 8	34	C. B. 92	Billed a H. × K.
9	58	" 454	.....	2	◇M	" 9	39	" 454	
"	54	C. F. 112	Burton	8	J. F. M.	" 9	36	C. F. 112	
10	62	C. B. 431	Brenham ..	1	P. M.	" 10	43	C. B. 431	
"	68	C. F. 284	Navasota ..	3	H. & M.	" "	46	C. F. 284	
8	44	C. B. 202	Brenham ..	2	F. W. S.	" 12	51	G. B. 137	
"	"	"	" ..	1	L. C. C.	"	"	"	
"	"	"	" ..	1	W. D. J.	"	"	"	
13	93	C. F. 277	Kosse	6	(W)	13	58	C. F. 277	
10	65	C. B. 358	"	1	H. N.	10	41	C. B. 258	
"	"	"	"	1	W. H. W.	"	"	"	
"	66	C. B. 208	"	1	J. W. T.	"	42	C. B. 208	S'g'ed as J. W. G.
16	110	C. F. 155	"	7	(W) J. E.	17	66	C. F. 155	
8	48	G. B. 110	"	5	B. + B.	8	31	G. B. 110	
13	93	C. F. 277	"	1	J. + J. P. H.	13	58	C. F. 277	
				43	bales.				

249 B.

Date.	W. B.	Car.	Station.	No. B. C.	M'ks.	Houston to Galv'n. W. B.	Car.	Date.	Rem'ks.
Dec. 13	94	C. B. 463	Kosse	3	J. × J. P. H.	63	G. B. 7	Dec. 15	
16	107	C. S. 95	Brenham ..	1	S. + B.	66	C. S. 95	" 17	
"	"	" "	" ..	1	E. W. S.	"	" "	" "	
22	136	C. B. 31	Kosse	2	J. A. W.	77	31	22	
24	143	" 226	Nava.....	5	D. W. X.	83	226	24	
"	149	" 49	Kosse	1	L. G.	88	49	27	
26	154	" 304	"	1	J. A. W. (L)	86	304	"	
"	"	"	"	1	J. A. W. D. L.	"	"	"	
27	157	C. F. 290	"	1	G. S.	89	290	9	
29	175	G. B. 145	"	2	(C) 2.	100	145	30	
"	176	C. S. 198	"	1	(C) 2.	101	198	"	
"	184	C. F. 293	"	2	(C) 3.	108	293	31	
1871.									
Jan'y 2	4	C. F. 235	Calvert....	3	G. W.	4	235	Jan. 3	
4	20	C. B. 411	Kosse	1	W. T. W.	11	411	" 5	
10	63	" 76	"	1	J. A.	42	76	" 11	
11	70	C. F. 5	"	1	T. S. B.	49	C. F. 5	" 11	
"	"	"	"	7	(C X C)	"	"	"	
"	71	C. F. 129	"	4	(C X C)	50	C. F. 129	11	
"	"	" 443	"	4	(C X C)	"	C. F. 443	11	
				42	bales.				

250 C.

Date.	W. B.	Car.	Station.	No. B. C.	M'ks.	Houston to Galv'n. Date.	W. B.	Car.	
Jan'y 12	77	C. B. 423	Kosse	2	(C X C)	Jan'y 12	55	C. B. 423	
"	78	C. F. 279	"	1	(C X C)	"	56	279	
"	"	G. B. 127	"	1	Vanz.	"	"	127	
"	"	"	"	1	Sterly.	"	"	"	
"	"	C. F. 279	"	1	Stacy.	"	"	279	
14	88	G. B. 160	"	6	Sterly.	14	63	160	
"	"	"	"	5	Vanz.	"	"	"	
"	"	C. B. 16	"	1	R. K. M.	"	"	C. B. 16	
"	"	"	"	1	T. J. T. R. K. M.	"	"	"	S'g'd T. J.
13	80	G. F. 45	"	1	J. K.	13	58	45	
16	94	" 63	"	1	W. D. H.	17	67	43	
17	104	G. B. 157	"	2	Storey.	18	73	157	
"	"	C. B. 207	"	1	W. D. H. W. W. H.	18	74	207	
18	111	" 326	"	1	S. + F.	19	78	326	
16	98	" 452	Calvert....	4	T. D. L.	17	68	452	
21	129	G. B. 1	Kosse	1	T. D. L.	21	89	1	
"	"	" 169	"	2	T. D. L.	"	"	169	
"	"	" 10	"	2		"	"	10	
				34	bales.				

251 D.

Date.	W. B	Car.	Station.	No. B. C.	M'ks.	Houston to Galv. Date.	W. B.	Car.	
Jan'y 21	129	G. B. 1	Kosse.....	1	W. M. L.	Jan'y 21	89	G. B. 1	
"	"	" 169	"	3	W. M. L.	" "	"	169	
"	"	C. F. 289	"	1	G. F. B.	"	"	289	
"	"	"	"	1	J. R.	"	"	"	
"	"	"	"	1	J. M. F.	"	"	"	
24	146	C. B. 180	"	1	C. × B.	24	101	180	
28	174	" 238	"	6	(W) S. L.	28	115	238	
31	193	C. F. 154	"	7	H. W.	Feb. 1	1	C. F. 154	(1 HcW.)
30	187	C. B. 367	"	1	D.	Jan. 30	121	367	S'g'd (D.
Feb'y 2	10	" 423	"	1	(W) E.	Feb. 3	10	423	
	"	" "	"	1	(W) W. W. C.	"	"	"	
2	11	" 241	"	1	(W) W. C.	"	9	241	
4	28	G. F. 46	Bremond..	14	S. F. ⋀	4	20	46	
				39	bales.				

252 E.

Date.	W. B.	Car.	Station.	No. B. C.	Marks.	Houston to Galv'n. Date.	W. B.	Car.
1870.						1870.		
Nov. 25	122	C. B. 240	Bremond.....	1	J. S.	Nov. 25	73	240
Dec. 30	185	" 434	Kosse.....	1	B. + B.	Dec. 31	104	434
1871.								
Feb'y 9	56	C. S. 198	"	1	C. × B.	Feb'y 9	38	198
"	60	G. B. 148	"	1	" N	13	48	148
"	57	" 116	"	2	M. R. T.	9	39	116
11	72	" 177	"	1	A. B.	11	46	177
15	100	" 150	"	1	B. Sain.	16	63	150
"	"	" 175	"	1	B. Sain.	16	"	175
10	64	C. F. 247	"	1	J. B. P.	10	42	247
22	143	C. B. 373	"	2	B. P. B.	22	91	373
"	144	C. B. 344	"	1	B. P. B.	"	92	344
24	163	" 418	"	3	B. P. B.	25	105	418
22	144	" 89	"	1	B. P. B.	22	92	89
"	146	C. S. 309	Calvert.....	2	(U) J. H.	23	94	309
	162	C. F. 114	Kosse.....	3	(J)	25	104	114
"	"	" 258	"	1	(J)	"	"	258
25	167	C. B. 179	Bryan.....	5	E. J. L.	"	108	179
"	"	462	Kosse.....	1	T. D. L. Care.	"	"	462
				29	bales.			

Date.	W. B.	Car.	Station.	No. B. C.	M'ks.	Houston to Gal. Date.	W. B.	Car.
1871.								
Feb'y 25	167	C. B. 462	Kosse	2	T. D. L. B.	Feb. 25	108	462
Mar. 2	10	C. F. 266	Calvert	4	⟨B⟩ C.	Mar. 2	10	266
9	54	C. B. 428	Kosse	1	J. R.	" 10	41	428
13	77	" 187	"	2	J. R.	" 13	57	187
Feb. 15	100	" 302	"	1	P. P. Spivey	Feb. 16	63	302
"	"	G. B. 175	"	1	J. R.	" "	"	175
"	"	"	"	1	G. R.	"	"	"
April 14	73	C. F. 97	"	2	J. D.	Apl. 15	55	C. F. 97
"	"	"	"	2	D. N.	"	"	"
"	"	"	"	1	D. M.	"	"	"
"	"	"	"	2	T. D. L. J. H.	"	"	"
13	67	C. S. 95	"	7	D. W.	14	50	95
				26	bales.			

Recd. from the H. & T. C. R. Way Co., by the G., H. & H. R. R. Co., the above 217 bales cotton, and shipped same to Galveston, as shown in this list, comprising sheets A, B, C, D, E, F, a/c Moody & Jemison, Galveston.

(Sig'd) R. H. WILLIAMS,
Agt. G. R. R.,
Per R.

254 *Report of master.—Filed Feb'y 22nd*, 1872.

U. S. circuit court, eastern district of Texas, at Galveston.

N. A. COWDREY ET AL., COMPLAINANTS,
vs.
THE GALVESTON, HOUSTON & HENDERSON R. R. and others, defendants.
} Chancery, No. 1.

Report of Edward T. Austin, special master, upon the claim of Moody & Jemison against N. A. Cowdrey, receiver, for cotton lost on the Galveston, Houston & Henderson Railroad while being operated by the receiver.

The claimants, Moody & Jemison, claim of the receiver seventy-five bales of cotton as received by the road and not delivered, and base their claims on the receipts filed with their claim, purporting to be signed by R. A. Williams, agent of the G., H. & H. R. R. at Houston. The authority & signature, not being denied by the receiver, is admitted.

See receipts A to .

By the testimony of Julius Maas claimants prove that the claim as filed corresponded with the receipts.

255 By the testimony of Geo. F. Alford and W. L. Moody the claimants proved a custom to settle for lost cotton by estimating a bale at five hundred pounds and the class as good ordinary. Mr. Julius Maas, recalled, testified to same effect; also, that good ordinary cotton the past year had averaged over 15 cents, gold; in the month of January, 1872, over 18 cents, gold; and on 20th January, 1872, that is

was worth 18½ cents gold, per pound; that the average price of gold during the past year was ten cents, currency, premium on the one dollar gold.

On the part of the defendants: That all the cotton claimed was claimed by bills lading from other roads from points above the terminus of the G., H. & H. R. R.; that there was in possession of claimants on 20 Jany., '72, a number of bales of cotton delivered by the G., H. & H. R. R., the ownership of which has not been ascertained; that the claimants have a suspence-account in which are placed all cottons
256 of which the claimants have no evidence of ownership.

By the testimony of Mr. Wren defendants proved press-receipts marked "A," and by his testimony proved the delivery to the merchants' & planters' press of twenty-eight of the seventy bales claimed on receipts signed by Williams and bills lading from above the terminus; also, that these had been substituted for some of the missing bales—eight other bales which had been received by the presses for claimants as in place of the cotton way-billed to claimants. Also proved by said witness rate of freight on cotton from the various stations from which cotton claimed lost was shipped to Galveston; also the mode & manner of keeping account of cotton shipped and delivered.

From the testimony the master finds, and so reports:

That of the seventy bales claimed, shipped over the Houston & Texas Central R. R. & the G., H. & H. R. R., twenty-eight were deliv-
257 ered; that eight bales were delivered to the claimants' agents, the presses, in lieu of particular marks, and accepted, and not returned to the carrier, and that the claimants are short on those cottons thirty-four bales.

That the cotton so short is to be accounted for by the receiver, at weight per bale, five hundred pounds; class of cotton, good ordinary; price per pound, eighteen and one-half cents, gold, and the premium on gold ten cents currency, per one dollar gold; currency, $1.10. That the value of 1,700 pounds of good ordinary cotton thus ascertained is $3,459.50, currency.

That the carrier is entitled to freight on the cotton delivered or paid for by him, and that the freight on said cotton was three hundred & two $\frac{02}{100}$ dollars, currency, leaving due the claimants from N. A. Cowdrey, as receiver, on this part of the claim the sum of three thousand one hundred and fifty-seven $\frac{48}{100}$ dollars, currency.

The master allows the highest price for cotton that could be
258 obtained between the time it should have been delivered and judicial demands, and interest at 8 % from 20th January, 1872, on the amount found to be due.

The claimants claim other five bales in the petition on the receipts signed by Williams; but the proof and exhibit of claim show that these other five bales are claimed to have been lost, shipped over the Galveston, Harrisburg & San Antonio Railway Co., and are nowhere specified on the receipts signed by Williams.

The master finds no proof of the fact that the five bales charged as received from the G., H. & S. A. R. R. ever came into possession of the G., H. & H. R. R., nor does the petition claim them as such.

The master reports to the court the testimony taken before him in this case, with the vouchers filed, viz:

Testimony of Julius Maas for claimant.
" " Geo. F. Alford " "
" " W. L. Moody " "
" " W. A. Wren " defendant.

259 Also, statement of adjustment, to show how the result was arrived at.

Respectfully submitted.

EDWARD T. AUSTIN,
Special Master.

260 *Statement of claims of Moody & Jemison against N. A. Cowdrey, receiver of G., H. & H. R. R.*

Claimed by them lost from Kosse	39 bales.	
" " " " " Brenham	13 "	
" " " " " Bremont	3	
" " " " " Burton	1	
" " " " " Calvert	11	
" " " " " Navasoto	3	
Bales claimed lost from points on Central road	70 bales.	
Receiver proves to have delivered to the presses for claimants of the specific cotton claimed—		
From Brenham	4	
Kosse	19	
Bremond	1	
Calvert	4	
	— 28	
Balance not proved delivered	42	
That eight bales had been substituted on delivery to the presses & accepted by the presses, & not returned by claimants to receiver	8	
Leaving not delivered	34	
34 bales, @ 500 lbs., 17,000 lbs., @ 18¼, gold		$3,145 00 gold.
Premium, @ 10 % on 3,145.00, is		314 50
Claim as proved		$3,459 50

E. & O. E.

EDWARD T. AUSTIN, *Master.*

The carrier is entitled to freight on the cotton delivered or paid for freight on 39 bales from Kosse, coin, 3.60, currency, 1, amounting to, coin, 140.40 10 %, 14.04, 39		193 44
Freight from Brenham on 13 bales, @ coin, $150, currency, $1, is 19.50 coin, @ 10, 195		34 45
Freight from Burton, 1 bale, @ 2.25 (22), coin, 2.45, 1		3 45
Freight from Bremond, 3 bales, @ 3.40, coin 3.74, c'y, $1, is 11.22, 3		14 22
Freight from Calvert on 11 bales, @, coin, 3.10 is 3.41, & 1 c'y, is		48 51
Freight from Navasota on 3 bales, @ 1.50, coin, is 1.65 c'y & 1 c'y		7 95
Balance		3,157 48
	3,459 50	3,459 50
Balance down	3,157 48	

261 *Cotton of the list claimed proved to have been delivered to presses for Moody & Jemison by G., H. & H. R. R.*

Marks.		
J S	1 C B, 240, Bremond	1 bale L C S.
B & B	2 G B, 110, Kosse	1 "
H & K	1 C B, 92 "	1 "
W B J	1 G B, 137, Brenham	1 " W B I.
(M)	1 C B, 454, Kosse	1 "
P M	1 C B, 431, Brenham	1 " W P.
(W) J P	1 cf, 155, Kosse	1 " (W)

B & B.....	C B, 434,	Kosse	1	"	
W T W.....	1 C B, 411,	Kosse	1	"	
D D.....	2 cf, 289,	Brenham ..	1	"	bales shipped & 4 delivered.
J A	1 C B, 76,	Kosse	1	"	J A S.
Vanz	1 C B, 127,	Kosse	1	"	
Storey.....	1 " "	"	1	"	
T J T.....	1 C B, 16	"	1	"	
(W)	1 cf, 289	"	1	"	
Storey.....	4 C B, 160	"	4	"	
Vanz	5 " 160	"	1	"	
Pressler	1 G B, 13,	Brenham ..	1	"	
D	1 C B, 367,	Kosse	1	"	
B P B.....	2. C B 418,	"	1	"	
Storey, F. & K.	C B 345.	"	1	"	
S Fields	4 " " 419,	"	4	"	23 out of 24 delivered.
(A)	1 " " "	"	28	bales total.	

I certify the above list to be correct from the proofs.

EDWARD T. AUSTIN, *Master.*

(The foregoing report of master endorsed as follows, to wit:) "Ch. 77. Chancery No. 1. Moody & Jemison vs. N. A. Cowdrey, receiver. Report of Edward T. Austin, special master. Filed Feb'y 22, 1872. Levi Jones, clk."

262 *Evidence of claimants.—Railroad receipts.—Filed Feb'y 22nd, 1872.*

HOUSTON & TEXAS CENTRAL RAILWAY COMPANY,
FREIGHT OFFICE, HOUSTON STATION,
Houston, Sept'r 6th, 1871.

Date.	Station.	W. B.	Car.	No. B. C.	Marks.	Houston to Galveston. W. B.	Car.	Date.	Consignees.
Dec 17	Brenham..	115	cf 58	2	H R	67	cf 58	Dec. 17, '70	Moody & Jemison.
Jan. 21	Kosse	129	" 289	1	(W M)	89	cf 289	Jan'y 21, '71	
Mch. 9	"	55	CB 345	3	F R Storey. S. Fields	40	cB 345	Mar. 9, '71	
" 29	Calvert ...	178	" 419	13	(A)	128	419	" 29, 71	
" "	"	"	" "	6	S. Fields. 10	128	419	" 29, '71	
" "	"	"	" "	5	S. Fields.	128	419	" 29, '71	

Received the above B/c from the H. & T. C. R'way Co., and forwarded the same to Galveston as specified in statement.

R. H. WILLIAMS,
Agt. G., H. & H. R. R. Co., per R.

263 OFFICE OF THE HOUSTON AND TEXAS CENTRAL RAILWAY CO.,
Houston, Texas, Sept'r 19th, 1871.

Station.	Date.	W. B.	Car.	No. B'C.	Mark's.	W. B.	Houston to Galveston. Car.	Houston to Galveston. Date.	Consignee.
Brenham..	Jan. 9.	47	cf 289	5	D D	30	cf 289	Jan'y 9	Moody & Jemison.
"	" 25	153	G B 13	1	Pressler	105	G B 13	" 25	" "
"	" "	"	cB 242	1	(L)		" "	" "	" "
Calvert	" 17	104	cf 249	3	H J H O W	73	cf 249	" 18	" "
"	" "	"	"	1	J H O	"	"	" "	No m'k changed by C. R. R. given by telegraph to Galv.
Bermond ..	" 28	176	G B 155	4	D D	116	G B 155		
Navasoto...	" 11	60	cf 46	2	H × M	40	cf 46	Jan'y 11	

Received the above 17 B/c from the H. & T. C. R'way Co., & forwarded the same to Galveston as specified in statement.

R. H. WILLIAMS,
Agt. G. R. R.

264 A.

Statement of receipt and shipment of 213 *bales cotton via H. & T. C. R'w'y Co., and G., H. & H. R. R., a'c Moody & Jemison, Galveston.*

Date.	W. B.	Car.	Station.	No. B. C.	Marks.	Houston to Galveston. Date.	Houston to Galveston. W. B.	Houston to Galveston. Car.	
Dec. 8	44	cB 202	Brenham..	1	T C	Dec. 12	51	G B 137	
" "	50	" 92	Kosse....	2	H K	" 8	34	C B 92	Billed @ H. & K.
" 9	58	" 454	.....	2	M	" 9	39	cB 454	
" "	54	cf 112	Burton	8	J F M	" 9	36	cf 112	
" 10	62	cB 431	Brenham ..	1	P M	" 10	43	cB 431	
" "	68	cf 284	Navasoto..	3	H & M	" 10	46	cf 284	
" 8	44	cB 202	Brenham..	2	F W S	" 12	51	G B 137	
.....	....	.....	.....	1	L cc	" 12	51	" 137	
.....	....	.....	.....	1	W B J	" 12	51	" 137	
" 13	93	cf 277	Kosse	6	(W) H W	" 13	58	cf 277	
" 10	65	cB 358	"	1	W H W	" 10	41	cB 358	as W H.
" "	"	" "	"	1	J W T	" 10	41	cB 358	
" "	66	cB 208	"	1	(W) J E	" 10	42	cB 208	signed as for J W G.
" 16	110	cf 155	"	7		" 17	66	cf 155	
" 8	48	G B 110	"	5	B & B	Dec. 8	31	G B 110	
" 13	93	cf 277	"	1	J & J P H	" 13	58	cf 277	
" 30	....	.....	.....	43	bales				

265 B.

Date.	W. B.	Car.	Station.	No. B. C.	Marks.	Houston to Galveston. W. B.	Date.	Car.	
Dec. 13	94	C B 463	Kosse.....	3	J & J P H	63	Dec. 15	G B 7	
" 16	107	C S 95	Brenham.....	1	S & B	66	" 17	cf 95	
" "	"	" "	"	1	E W S	66	" 17	cf 95	
" 22	136	C B 31	Kosse.....	2	J A W	77	" 22	cB 31	
" 24	143	" 226	Navasoto.....	5	D W X	83	" 24	cB 226	
" "	149	" 49	Kosse.....	1	L G	88	" 27	cB 49	
" 26	154	" 304	"	1	J A W ◇I	86	" 27	cB 304	
" "	"	"	"	1	J A W D L	86	" 27	cB 304	
" 27	157	cf 290	"	1	G S	89	" 27	cf 290	to Alford & Veal.
" 29	175	G B 145	"	2	◇C 2	100	" 30	G B 145	
" "	176	C S 198	"	1	◇C 2	101	" 30	cf 198	
" 29 1871.	184	cf 293	"	2	◇C 3	108	" 31	cf 293	
Jan'y 2	4	" 235	Calvert.....	3	G W	4	Jan. 3	cf 235	
" 4	20	cB 411	Kosse.....	1	W T W	11	" 5	cB 411	
" 10	63	" 76	"	1	J A	42	" 11	cB 76	
" 11	70	cf 5	"	1	T S B	49	" 11	cf 5	
" "	"	" "	"	7	◇C X C	49	" 11	cf 5	
" "	71	" 129	"	4	◇C & C	50	" 11	cf 129	
" "	"	" 443	"	4	◇C & C	50	" 11	cf 443	
				42	bales.				

266 C.

Date.	W. B.	Car.	Station.	No. B. C.	Marks.	Houston to Galveston. Date.	W. B.	Car.	
Jan'y 12	77	c B 423	Kosse.	2	◇C & C	Jan. 12	55	cB 423	
"	78	cf 279	"	1	◇C & C	" 12	56	cf 279	
" "	"	G B 127	"	1	V A N Z	" 12	56	G B 127	
" "	"	" 127	"	1	Storey	" 12	56	" 127	
" "	"	cf 279	"	1	Storey	" 12	56	cf 279	
" 14	88	G B 160	"	6	Storey	" 14	63	G B 160	
" "	"	" "	"	5	V A N Z	" 14	63	G B 160	
" "	"	C B 16	"	1	R K M	" 14	63	cB 16	
" "	"	" "	"	1	T J T	" 14	63	cB 16	Signed for as T J S.
" 13	80	G F 45	"	1	R K M	" 13	58	G F 45	
" 16	94	" 63	"	1	J K	" 17	67	G F 43	
" 17	104	G B 157	"	2	W D H	" 18	73	G B 157	
" "	"	C B 207	"	1	Storey W D H	" 18	74	cB 207	
" 18	111	" 326	"	1	W W H	" 19	78	cB 326	
" 16	98	C B 452	Calvert...	4	S & F	" 17	68	cB 452	
" 21	129	G B 1	Kosse.....	1	T D L	" 21	89	G B 1	
" "	"	" 169	"	2	T D L	" 21	89	G B 169	
" "	"	" 10	"	2	T D L	" 21	89	G B 10	
				34	bales.				

267 D.

Date.	W. B.	Car.	Station.	No. B. C.	Marks.	Houston to Galveston. Date.	W. B.	Car.	
Jan'y 21	129	G B 1	Kosse.....	1	W M L	Jan. 21	89	G B 1	
" "	"	G B 169	"	3	W M L	Jan. 21	89	G B 169	
" "	"	cf 289	"	1	G E B	" 21	89	cf 289	
" "	"	" "	"	1	J R	" 21	89	cf 289	
" "	"	" "	"	1	J M F	" 21	89	cf 289	
" 24	146	cB 180	"	1	C & B	" 24	101	cB 180	
" 28	174	" 238	"	6	(W) & S L	" 28	115	cB 238	
" 31	193	cf 154	"	7	H W	Feb'y 1st	1	cf 154	1 bale should be McW.
" 30	187	cB 367	"	1	(W) D	Jan. 30	121	cB 367	Signed for as D.
Feb. 2	10	" 423	"	1	(W) E	Feb'y 3	10	cB 423	
" "	"	" "	"	1	(W) W W C	" 3	10	cB 423	
" "	11	" 241	"	1	(W) W C	" 3	9	cB 241	
	2	G F 46	Bremond	14	A S F	" 4	20	G. F. 46	
				39	bales.				

268 E.

Date.	W. B.	Car.	Station.	No. B. C.	Marks.	Houston to Galveston. Date.	W. B.	Car.	
1870.						1870.			
Nov. 25	122	CB 240	Bremond.....	1	J S	Nov. 25	73	cB 240	
Dec. 30	185	434	Kosse	1	B & B	Dec. 31	104	cB 434	
1871.						1871.			
Feb'y 9	56	cf 198	"	1	C & B	Feb. 9	38	cf 198	
" "	60	G B 148	"	1	C & B N	" 13	48	G B 148	
" "	57	" 116	"	2	M R T	" 9	39	G B 116	
" 11	72	" 177	"	1	A B	" 11	46	G B 177	
" 15	100	" 150	"	1	B Sain	" 16	63	G B 150	
" "	"	" 175	"	1	B Sain	" 16	61	G B 175	
" 10	64	cf 247	"	1	J B P	" 10	42	CB 373	
" 22	143	CB 373	"	2	B P B	" 22	91	cf 247	
" "	114	" 344	"	1	B P B	" 22	92	" 344	
" 24	163	" 418	"	3	B P B	" 25	105	" 418	
" 22	144	" 89	"	1	B P B	" 22	92	CB 89	
" 22	146	C S 309	Calvert.....	2	V J H	" 23	94	cf 309	
" 24	162	cf 114	Kosse	3	J	" 25	104	cf 114	
" "	"	cf 258	"	1	J	" 25	104	cf 258	
25	1 7	CB 179	Bryan.....	5	F J L	" 25	108	cB 179	Agt. G. R. R.
" "	"	462	Kosse	1	T D L Comr	" 25	108	cB 462	
				29	Bales.				

269 F.

Date.	W. B.	Car.	Station.	No. B. C.	Marks.	Houston to Galveston. Date.	W. B.	Car.
Forward.								
Feb. 25	167	cB 462	Kosse	2	T D L B	Feb. 25	108	cB 462
Mch. 2	10	cf 266	Calvert	4	(B) C	Mar. 2	10	cf 266
" 9	54	cB 428	Kosse	1	J R	Mar. 10	41	cB 428
" 13	77	" 187	"	2	J R	" 13	57	cB 187
Feb'y 15	100	cB 302	"	1	P P Spivey	Feb. 16	63	cB 302
" "	"	G B 175	"	1	J B	" 16	63	G B 175
" "	"	" "	"	1	G R	" 16	63	G B 175
Apr. 14	73	cf 97	"	2	J D	Apr. 15	55	cf 97
" "	"	" "	"	2	D N	" 15	55	cf 97
" "	"	" "	"	1	D M	" 15	55	cf 97
" "	"	" "	"	2	T D L J H	" 15	55	cf 97
" 13	67	A 95	"	7	D N	" 14	50	cf 95
				26	bales.			

Recd. from the H. & T. C. Rw'y Co., by the G., H. & H. R. R. Co., the above 217 bales cotton, and shipped same to Galveston, as shown on this list comprising sheets A B C D E F, a/c Moody & Jamison, Galveston.

R. H. WILLIAMS,
Agt. G. R. R.,
Per R.

Sheet A	43	bales.
" B	42	"
" C	34	"
" D	30	"
" E	39	"
" F	26	"
Total	213	bales.

270 The foregoing evidence of claimant endorsed as follows, to wit: "Ch. 77. Moody & Jamison vs. N. A. Cowdrey, receiver. Evidence of claimants. G., H. & H. R. R. receipts for cotton from Central Road. Filed Feb'y 22, 1872. Levi Jones, clk."

271 *Evidence of receiver.—Press receipts.—Filed February 22, 1872.*

Duplicate receipts from Merchants' Press.

No. Car.	No. W. B.	No. B. C.	Marks.	Date.	No. Car.	No. W. B.	No. B. C.	Marks.	Date.
C. B. 240.....	73	2	L C S	Nov. 26	G. B. 13.....	"	1	J H L.....	Jan'y 25
" "	"	2	J F P	" "	" "	"	1	L C C.....	" "
" "	"	2	J B R	" "	" 155	116	3	D D.....	" 28
" "	"	3	L O.....	" "	" "	"	1	J	" "
" "	"	1	J S	" "	" 367.....	121	1	W T W...	" 31
" "	"	1	F O.....	" "			2	F. B O.....	" "
" "	"	1	W O.....	" "					
" "	"	9	D M.....	" "			1	8 X 8 B B F H	" "
" "	"	3	G	" "			2	Storey	" "
" "	"	1	G	" "			1	D. F M	" "
							1	D.....	" "
" 289.....	"	1	D B.....	Jan'y 21			2	S O S S.... F & C	" "
		1	B O A Z....		cB. 345	40	6	Story..... F & R	March 9
		1	G W R.....		" "	"	3	Story.....	" "
		1	F D.....		" "	"	2	W M & P..	" "
		1	W M		" 419.....	128	23	S Fields...	" 10
		1	J J D		" "	"		" A	
G. B. 13	105	4	Pressler	Jan'y 25	" 418.....	105	3	P P B.....	
" "	"	2	R R	" "			2	B & S.....	
" "	"	2	J A S	" "			1	J R J	
" "	"	1	T R	" "			1	T B P.....	
" "	"	1	J S L	" "					

Recd. for Merchants' Press the cotton mentioned above, for Mess. Moody & J.

MERCHANTS' PRESS,
Per F. L. LEE.

I hereby certify that F. L. Lee was the authorized clerk of Merchants Press to receipt for cotton, and that the above is his signature.

A. P. LUFKIN, *Supt.*

Subscribed and sworn before me this the 19th day of February, A. D. 1872.

THOMAS C. BIDDLE,
Notary Public for Galveston County.

272 Duplicate receipts from Planters' Press.

Car No.	W. B. No.	No. B. C.	Marks.	Date.	Car No.	W. B. No.	No. B. C.	Marks.	Date.
G B 137.....	51	1	W B I	Dec'r 12	C B 76.....	42	1	J A S	Jan'y 11
G B 431.....	43	1	W P.....	" 10	cf 155.....	66	7	W	Dec. 17
R R.....	LOT	1	W G.....	" 12	"	"	1	D H R	" "

Received the above cotton as per marks & cars specified, for Messr. Moody & Jemison.
(Duplicate.)

C. T. McMAHON,
For Planters' Press.

273 Duplicate receipts from Planters' Press.

Car No.	W. B. No.	No. B. C.	Marks.	Date.
G B 110	31	2	L L	Dec'r 8
" "	"	2	J W S	" "
" "	"	5	B & B	" "
" "	"	3	L S	" "
C B 92	34	2	E H X	" 9
" "	"	2	H & K	" "
" 454	39	15	W	" 9
" "	"	2	M	" "
" 49	89	1	R M	" 27
" "	"	1	T W	" "
" "	"	2	B & B T D L	" "
" "	"	1	DUN T D L	" "
" "	"	1	Ruby T D L	" "
" "	"	2	L G	" "
" 434	104	1	B & B	" 31st
" 411	11	1	J & y	Jan'y 5th
" "	"	1	S & Brown	" "
" "	"	1	W T W	" "
" "	"	1	D B & R	" "
" "	"	1	D J H	" "
" "	"	1	T y	" "
" 289	30	4	D D	" 9
" "	"	1	W O B	" "
" "	"	1	J S L	" "
" "	"	1	S & B	" "
" "	"	1	C W	" "
G B 127	56	1	Storey	" 12
" "	"	1	VA NZ	" "
C B 16	63	1	T J T	" 14
" "	"	1	J W M	" "
" "	"	1	R K M	" "
" "	"	1	S & D W	" "
G B 160	63	2	I C H	Jan'y 14
" "	"	6	Story	" "
" "	"	1	J W S	" "
" "	"	1	VANZ	" "
" "	"	2	ROSS	" "

Recd. the above cottons for Messrs. Moody & Jemison as per mark & cars specified.
(Duplicate.)

C. T. McMAHON,
For Planters' Press.

274 The foregoing evidence of receiver, endorsed as follows, to wit: "Ch. 77, (A,) Moody & Jemison vs. Receiver. Evidence of receiver. Press receipts in testimony of A. W. Wren. Filed Feb'y 22, 1872. Levi Jones, clk."

275 U. S. circuit court, eastern district of Texas, at Galveston.

N. A. COWDREY & OTHERS
vs.
THE GALVESTON, HOUSTON & HENDERSON Railroad Co. & others, N. A. Cowdrey, receiver. } Chancery, No. 1.

In the matter of the claim of Moody & Jemison vs. N. A. Cowdrey, as receiver, for lost cotton, referred to Edward T. Austin, master in chancery, by order of the Hon. Thos. H. Duval, judge of the district court of the United States for the western district of Texas, acting in the absence of a judge for the eastern district of Texas, made in chambers at Austin, on the 24th January, 1872.

On the 2d day of February, 1872, the master gave written notice to the parties that he would hear the matter on the 8th February, 1872, at his office, in Galveston, at 4 p. m.

On the 8th day of February, 1872, at 4 p. m., the master was attended by M. C. McLemore, representing the claimants, and Robert Colwell, esquire, representing N. A. Cowdrey, receiver.

276 Claimants introduced JULIUS MAAS, who was sworn and testified:

I am clerk for Moody & Jemison; made up the account of claim as presented.

Being shown sundry vouchers, says that he assisted in getting them up; first from the books of the Houston & Texas Central Railroadt and checked them again on the books of the G., H. & H. R. R. Co., the signature to the vouchers is that of R. H. Williams, made by his clerk at the office of the G., H. & H. R. R. Co.; agent for said road made up the claim from these vouchers; compared vouchers with claim and found to correspond in marks except H. W., rece'pted for as W. H., J. W. J. receipted for as J. W. G., T. J. T. as T. J. S.

Claimants introduced GEORGE F. ALFORD, who was sworn, testified:

277 I am a cotton-factor; have been in the business nearly six years; am familiar with prices of cotton in Galveston market for the last year or two; average value of cotton last month over 18 cents gold for good ordinary per pound.

On 20th January, '72, was worth about 18½ for good ordinary; is worth to-day 19 cents, gold; do not think the average value of cotton during the past year was over fifteen cents; last spring or summer it advanced to about 16 cents, and was below 15 cents this fall; I think has averaged 16 cents since June, 1871. In November, a year ago, it was worth about 12 cents gold. It has gradually risen since July, 1871, to this time, except occasionally.

The average weight of cotton per bale, as agreed when the bale cannot be weighed in settlement, is 500 pounds; average grade in settlements when it cannot be sampled is good ordinary, & have only known on exception in my business. Cotton is sold for gold; never heard of a sale for currency in this market, that I now remember.

278 Have had settlement with the G., H. & H. R. R. for lost cotton; do not know the basis of the settlement. Average price of gold during the past year has been fully ten cents premium per dollar, gold. I think it was that in Jan'y, 1872.

Questioned by receiver:

Has rec'd cotton by the G., H. & H. R. R. If cotton was delivered to me by R. R., I should consider it my cotton unless it was shewn it was not mine, if waybilled to me without letter of advice or bill of lading. Has received some in that manner, but have returned it to railroad on their order; or, if I had been in the habit of receiving a particular mark, and cotton came to me in that mark without letter of advice or bill of lading; I should consider it intended for me unless otherwise instructed by shipper. It would have to be a peculiar kind of mark that I

279 would apply that rule to. Cotton of the same mark frequently comes consigned to different parties.

In the latter part of 1870 and winter of 1870 & 1871, there was great confusion in the delivery of cotton by marks to consignees by the transportation companies.

My house frequently did not receive the particular marks specified in bill of lading. If we were satisfied with the cotton, we allowed the substitution; otherwise not. If we were short on cotton, & the railroad offered us cotton to make up the deficit, if we were satisfied with the cotton, we would accept it. I would consider the title to it good, and that the railroad had the authority to substitute it.

Questioned by claimant:

The custom has been to turn over cotton rec'd without bill lading or letter of advice to some other factor, on the order of the road. If cotton was delivered to me without bill lading or letter of advice, and

280 the R. R. ordered me to turn it over to some one else, before complying with the order, I would have to be satisfied that the cotton was not intended for me, and that a mistake had occurred in the delivery; always had the cotton proposed to be substituted by the railroad examined before receiving it. Each was a special transaction. I do not know of any custom that requires the consignee to receive other cotton than that consigned to him. It is a matter of agreement and compromise.

Questioned by receiver:

If I had notice of cotton held by the road to be delivered to me, I would expect to exhibit either *as* a bill of lading or a letter of advice clearly describing the cotton.

Questioned by claimant:

If I had the receipt of one road to the other for cottons to be delivered to me, I should consider it as good as a bill of lading. It was fre-
281 quently the case last year that I received cotton without bill of lading or advice; and during the season I had several hundred bales so received, but at the close of the season not over the tenth would remain unclaimed. If I had cotton over at the end of the season, and the R. R. from which I received it should order it turned over to some one else, I should require good proof of its right.

GEO. F. ALFORD.

Case adjourned to 9th February, 1872, at 4 p. m.

At 4 p. m., the master was again attended by the parties represented, as before.

Claimants introduced JULIUS MAAS second time.

I am a cotton-clerk for Moody & Jemison, and am familiar with the customs of merchants in that business in Galveston.

The rule of settlement for lost cotton, where we have no data as to weight, to estimate a bale five hundred pounds, and the class at
282 good ordinary. The cotton the loss of which is claimed by Moody & Jemison, has never been delivered to Moody & Jemison. I have examined carefully to ascertain if it has ever been delivered to them, and am satisfied it has not been delivered. I have made demand for this cotton before; I think in the month of August, '71; and I went over the list with Mr. Gardner, agent for the road, and ascertained that 48 bales were missing and could not be accounted for. The marks and numbers I could identify.

These six or seven of the bales now claimed that have not been heretofore demanded because of the uncertainty as to which road was responsible for them.

I am acquainted with the prices of cotton during the last two seasons. I should say the average value of cotton, class good ordinary, has been fifteen cents gold per pound. The value of cotton in this market, good ordinary, on the 20th January, '72, was 18¾ cents per pound
283 gold. In August, '71, sixteen cents per pound gold,

The G., H. & H. R. R. has never settled for any lost cotton with Moody & Jemison, with me, nor w'th any other person for them that I know of. I have never had any settlement with them; from Oct., 1870, to Apl., '71, the period for which I examined the books of the Central Road, the G., H. & H. R. R. has not given bills of lading for cotton con-

signed to Galveston, but receipts to the Central Road for so many bales in a car, not specifying marks, but with the receipt a way-bill, specifying marks, and referred to in receipt. This way-bill was filed in the office of the Central. The G., H. & H. R. R. made out from the Central way-bill a way-bill of their own, shewing marks & consignees. I got this information from the agent of the Central at Houston.

No cotton has been delivered to Moody & Jemison in lieu of the cotton claimed to have been lost. I have examined for the purpose of ascertaining the fact.

Questioned by receiver:

284 I was at one time an employee of the Central, freight-agent for several years. The road during my time gave receipts for cotton specifying marks, but when the agent did not see it loaded, it was signed not accountable for marks; but if the agent saw it loaded, it was signed clear. Some of the bills lading for this cotton of Central Road have the word "good" before "order" erased. I have been cotton-clerk for Moody & Jemison since July 20th, 1871. My knowledge of the non-delivery of the cotton lost, previous to that date, is derived from an examination of their books since, bills lading of the Central Road, and press receipt.

I do not know whether more cotton is sold in winter than in summer, I do not know the proportions sold in winter or summer. I understand that a receipt signed by me as cotton-clerk for Moody & Jemison would be the receipt of the house, while I was in their employ, and any
285 instruction given by me, by their authority, would be their instructions.

J. MAAS.

W. L. Moody's testimony.

Questioned by claimant:

I have examined the petition critically, because I had to swear to it, and the statement in the petition is correct:

The cotton claimed to have been lost has not been delivered.

They are all claimed on bills lading from roads above the terminus of the G., H. &. H. R. R. I have received no cotton in place of the cotton lost; none has been substituted by the road.

In settling for lost cotton lost, the custom is to estimate the weight at five hundred pounds per bale & class good ordinary. I have made settlements on that basis. If one bale of a particular lot was lost, its weight and class would be arrived at best by an average of weight and class of those received.

286 I have been in the commission business in Galveston since 1866, and am familiar with the price of cotton in this market. I think that the price of cotton in this market since November, 1870, would average 15 cents per pound gold for good ordinary. On the 20th Jan'y, 1872, it was worth 18½ cents, gold. I have made demand for the cotton claimed to have been lost from time to time as cotton appeared to be missing; since Jan'y, 1871, up to June, '71, when I thought that were some thirty to thirty-five bales were short during the time that we had been receiving, and from that time, from time to time, I have made demand on the road for the short cotton up to the time of filing this petition. The road has never paid us anything for the lost cotton. I know the owners of every bale claimed to have been lost, and have advanced on them to the owners nearly to the full value of the
287 cotton for which we have no returns.

Questioned by receiver:

We have in some instances where cotton has been a bale short, and we had bales in suspense of similar or nearly similar mark, we have taken such bale out of suspense account and put it with the lot to complete it, and have so returned account sales; but in these instances we believe that it might be the same cotton or belonging to the same lot, and in some instances where we have so substituted, we have discovered that it was error, and have had to account to the owner for the cotton so applied.

We have made the substitution without consent of the owner where we have done it.

The suspense account of cotton is composed of all cottons coming to us without evidence of ownership, further than the fact of delivery to us by the carrier.

288 There have been during the time that this claim has accrued a large number of bales received by us that have gone into the suspense account, that have been delivered to us by the G., H. & H. R. R.

At the close of the account, say 20th Ja'y, '72, there were still in our possession a number of bales, the ownership of which has not been ascertained, delivered by this road.

Question. Did you not, prior to the 20th January, '72, propose to the company to allow as a credit 30 bales of the cotton in suspense account, leaving a balance due from the road of some 48 bales?

I did not make the proposition in that way. What I proposed was, if the road would guarantee us against any future claimant for the cotton, to accept the substitution, the road to pay the difference in money.

289 I proposed by way of compromise, as the road was about to be sold out, to take the cotton in suspense account delivered to us by the road and twenty-five hundred dollars in money, including freight-bills due the road, and give the road a clear acquit'ance.

The receiver refused to entertain the proposition.

The cotton-clerk of the firm has authority to direct the road as to what press cotton should be delivered.

The entries in the cotton-books about the cotton received and short were made by the cotton-clerk, Gardner by name, then employed by the firm. Gardner kept the cotton-books. The claim is made up from his entries from bills lading, press receipts, and actual claims made by the owners for cotton short.

Claimant:

I gave to the road a list of the cotton we have in suspense account that they might examine to see if there was any error in the delivery to us, and the road has not shown that there was any error in the delivery.

W. L. MOODY.

290 Adjourned to Monday, Feb'y 12, '72.

MONDAY, FEB'Y 12, 1872.—Parties present, and matter adjourned, at request of receiver, by consent, to Monday, 19th Feb'y, at 4 p. m., to enable defts. to procure proof.

EDWARD T. AUSTIN, *Master.*

MONDAY, *Feb'y* 19—4½ p. m.

Parties present.

Defendant, the receiver, introduced as a witness P. S. WREN, who was sworn, and testified:

In November and December, 1870, I was cotton-clerk at the depot of

the Galveston, Houston & Henderson R. R., at Galveston. I, as cotton-clerk, delivered to two presses cotton consigned to Moody & Jemison, Merchants' Press & Planters' Press. I was instructed by the house of Moody & Jemison, or their agent, in writing, to deliver cotton consigned to that house to those presses. Chas. T. McMahon was the receiving-clerk of the Planters' Press at that time. He was the only person
291 who represented the Planters' Press in receiving cotton from the railroad. Francis L. Lee was the receiving-clerk of the Merchants' Press at the time. (Shewn paper marked "A.") I have seen this paper and am familiar with its contents. The signatures of F. L. Lee and Chas. T. McMahon to that paper are genuine. I saw them sign it.

Freight on cotton per bale:

From	Brenham,	is on	Central	Road	150,	coin, on this road.
"	Calvert,	" "	"	"	310	"
"	Bremond,	" "	"	"	340	
"	Navasota,	" "	"	"	150	
"	Kosse,	" "	"	"	360	
"	Burton,	" "	"	"	225	
"	Bryan,	" "	"	"	250	

And one dollar currency per bale from Houston to Galveston in addition.

The account "A" is correct with one exception; the item dated Jan'y 25, CB 113, WB 105, should be one instead of four. I made the mistake myself in checking.

Questioned by claimant:

The account "A" is taken from the way-bills of the road, and Mr. Lee, clerk for the Merchants' Press, brought his books to the R. R.
292 depot, and I called the items on the account, and he checked them off. The item 4 was there when he signed the account; it was an error of mine in calling. It was intended to be 1.

The items on the account shew the total number of bales, in particular cars, on the particular date.

The clerk of the press has the number of each car that arrives, so that he may know when he has the full number of bales for him in that car. I have compared the account with Moody & Jemison claim, and the way-bill, No. car, No. & dates correspond exactly, but the number of bales differ. According to the claim of Moody & Jemison, there are forty-seven bales short of certain particular marks.

These items on the account "A" shew the particular cotton that came down in particular car for Moody & Jemison. The receiving-clerks at the presses took eight bales in lieu of particular marks missing. Finding the cotton in the car they considered a mistake had been
293 made in the mark in way-billing.

There are frequently errors made in way-billing cotton, and where the difference is slight from the general mark on the way-bill a substitution is made. These eight bales were in lieu of some of the 47 bales short.

Chas. T. McMahan signed the account A, at the Planters' Press, this morning. He had his receiving-books there. I made the account from the way-bill; his books shew number of car and date, not the way-bill. Mr. Lee signed the account with the error 25 Jan'y, on it; 2 way-bill shews No. of car and date.

Questioned by receiver:

I have not had *had* time to ascertain what cotton was substituted for

cotton claimed short by Moody & Jemison. I think cotton was substituted because at that time the receiving-clerks were in the habit of substituting cotton. The cotton was coming in very rapidly and marks sometimes defaced, and the marks frequently did not correspond
294 with the marks on the way-bills. I have found instances where, at different times, cotton to the amount of nine bales stated in the claim to have been way-billed to Moody & Jemison, not way-billed to any one. I found instances where cotton stated by Williams to be way-billed to Moody & Jemison, was marked on the way-bill, "No mark given."

Questioned by claimant:

The way-bills are in possession of the G., H. & H. Railroad, where the cotton had no mark given on way-bill and there was bill lading or mark on cotton; we telegraphed to Houston and got instructions to deliver according to mark. The cotton was way-billed to Galveston. I have never examined into the claim of Moody & Jemison before. I left the R. R. Jan'y 1st, 1871; am in its employ at this time.

W. L. MOODY called:

The Merchants' and Planters' Presses were authorized to receipt to the different transportation companies for cotton consigned to us,
295 but had no authority to take other marks in substitution for cotton consigned to us.

Testimony closed Monday, Feb'y 19, at 6 p. m.

EDWARD T. AUSTIN, *Master.*

The foregoing endorsed as follows: "Ch. No. 77. Chancery No. 1. Moody & Jemison vs. N. A. Cowdrey, receiver. Evidence taken and proceedings before Edward T. Austin, special master. Filed Feb'y 22, 1872. Levi Jones, clerk."

Notice of the filing of the master's report.—From rules and orders Feb'y 22nd, 1872.

N. A. COWDREY ET AL. *vs.* G., H. & H. R. R. CO., ET AL. } Ch. No. 1.

This day came Edw'd T. Austin, special master in this cause, and files herein his report on the claim of Moody & Jemison refer'ed to him in said cause.

Feb'y 22, '72.

Attest:

LEVI JONES,
Clk. U. S. Circt. Court, E. D. T., G.

296 *Master's report confirmed & order for payment.—From the minutes, May term, May 6th, 1872.*

U. S. circuit court.

MOODY & JEMISON *vs.* N. A. COWDREY, RECEIVER. } Ch. No. 1.

This cause having come on to be heard upon the report of Edward T.

Austin, esq'r, one of the masters of this court, to whom it was referred to ascertain and report upon the issues therein involved between the parties, by the order of said court, made in chambers, at Austin, on 24th January, 1872, which report bears date 22d Feb'y, 1872, and it appearing to the court that said report was duly returned by said master and filed in said court by the clerk thereof, on said 22nd day of February, 1872, and that no exceptions have been filed thereto, and that on due deliberation it seems to the court proper & just:

It is ordered, adjudged, and decreed that said report be in all things confirmed, and it appearing to the court that said report ascer-
297 tains the amount due said Moody & Jemison, by said Cowdrey, receiver, to be three thousand one hundred and fifty-seven dollars and forty-eight cents, ($3,157.48,) it is further ordered, adjudged, and decreed, and this court, by virtue of the power and authority therein vested, doth order, adjudge, and decree, that the said N. A. Cowdrey, receiver, pay to the said Moody & Jemison, complainants, the said sum of three thousand one hundred and fifty-seven dollars and forty-eight cents, ($3,157.48;) and it further appearing to the court that the said master has filed with said report his fee-bill for services rendered in said cause, amounting to two hundred dollars, and the same being reasonable and unobjected to, it is further ordered that said sum be taxed by the clrek in the bill of costs against the said receiver for the benefit of said master, and to be paid to him; and it is further ordered, adjudged, and decreed, that the said defendant pay to the said complainant their costs in this suit to be taxed.

298 *Order of continuance.—From the minutes, May term, June 15th, 1872.*

N. A. COWDREY AND OTHERS
v.
THE GALVESTON, HOUSTON AND HENDERSON Railroad Co. and others. } Ch. No. 1.

Ordered, that the several reports made by the master in this cause, upon applications for damages to goods, carried or received to be carried on the railroad, or otherwise, during the management thereof, by the receiver, after said reports shall have been confirmed, do stand for further consideration as to the order to be taken for the payment of said claims, until the next term of the court, with leave to the parties and the receiver to file suggestions in reference to such payment.

299 *Petition of Moody & Jemison to compel F. P. James to discharge decree.—Filed April 15th, 1873.*

In the circuit court of the United States in and for the eastern district of Texas.

N. A. COWDREY ET AL.
v.
G., H. & H. R. R. CO. ET AL. } No. 1. In chancery.

To the honorable the judges of said court:

William L. Moody and Elbert S. Jemison, copartners, residing and doing business in the city and county of Galveston, in said district, under the style of Moody & Jemison, for themselves, and all others in-

terested in a like manner, respectfully shew that, on 6 May, 1872, they obtained the decree of this court for the sum of three thousand one hundred and fifty seven $\frac{48}{100}$ dollars against said N. A. Cowdrey, receiver in said cause No. 1 in chancery, in pursuance of proceedings theretofore had in said court, according to its rules and practice, between complainants and said receiver, and by the terms of said
300 decree the said receiver was ordered to pay said sum to these complainants, and also to pay the fees of Edward T. Austin, master in said cause between complainants and said receiver, amounting to the sum of two hundred dollars; that altho' the said decree has been long rendered, and the said receiver been often requested to pay and discharge the same, he has wholly failed and refused so to do, and still refuses; and he informs complainants that he has no funds or property in his hands wherewith to pay the same, and that he has expended all sums under the former orders of the court that have come to his hands as receiver, as he has heretofore reported to the court; and complainants are, and have been since the rendition of said decree, unable to procure the payment and satisfaction of said decree by said receiver; that F. P. James, of New York, purchased the premises
301 in the possession of said receiver in said chancery cause No. 1, under the orders and with the approval of this court, and on the day of December, 1871, made and executed his certain bond for fifty thousand dollars, now on file and of record in said court, and a copy thereof is hereto attached, marked "A," and made a part hereof and referred to for the particulars, terms, and conditions of said bond; that under the terms of said bond the said James is and heretofore has been liable to pay these complainants the amount of their said decree, but wholly refuses so to do, tho' often requested.

Wherefore complainants pray for such order as the court may be pleased to give against said James, and for its decree against him for the amount of their aforesaid claim, and all costs, and for its process to enforce the same summarily. And they pray the court to grant them such further general and particular relief, and such orders and
302 process herein as may be necessary and proper against either, or both, said Cowdrey and James for the enforcement of their said rights.

McLEMORE & HUME,
Sol's. for Complainants.

The foregoing petition endorsed as follows: "Petition of Moody & Jemison to compel F. P. James to discharge decree in their favor against receiver N. A. Cowdrey. Filed April 15th, 1873. C. Dart, clerk."

A.

Circuit court of the United States, eastern district of Texas. December term, 1871.

N. A. COWDREY ET AL.
vs.
THE GALVESTON, HOUSTON AND HENDERSON Railroad Company et al.

Undertaking of purchasers to pay any future claim which may be allowed against the receiver.

Whereas, in the above-entitled cause, the premises in the pos-

session of N. A. Cowdrey, the receiver, have been sold and the sale thereof confirmed by this court; and whereas the railroad has been in the possession of this court since February 27th, 1867, to this date; and it is possible that there may be still outstanding and unliquidated claims against the receiver, growing out of the operation of the railroad, such as for lost or damaged freight, or for injuries to persons or property, or for expenses allowed by the court:

Now, therefore, I, Fred. P. James, of the city and State of New York, the purchaser of said premises, do hereby, in consideration of the premises, obligate myself, my heirs, successors, and assigns, in the penal sum of fifty thousand dollars, to pay any and all claims against said receiver which this court shall consider him liable to pay in excess of the funds and property still in the hands of the receiver.

In witness whereof I have hereto set my hand and seal at the city of Galveston this day *day* of December, 1871.

F. P. JAMES.

In presence of—
JAMES F. MAGUIRE.

The foregoing Exhibit A endorsed as follows, to wit: "Undertaking of purchaser to pay any future claims which may be allowed against the receiver. Filed Dec. 15, 1871. Levi Jones, clk."

Copy of petition of Moody & Jemison to compel F. P. James to discharge decree and evidence of service of same.—Filed May 21st, 1873.

In the circuit court of the United States in & for the eastern district of Texas.

N. A. COWDREY ET ALS. *v.* G., H. & H. R. R. CO. ET ALS. } No. 1. In chancery.

To the honorable the judge of said court:

William L. Moody and Elbert S. Jemison, copartners, residing and doing business in the city and county of Galveston, in said district, under the style of Moody & Jemison, for themselves and all others interested in a like manner, respectfully shews:

That on the 6th May, 1872, they obtained the decree of this court for the sum of three thousand one hundred and fifty-seven $\frac{48}{100}$ dollars against said N. A. Cowdrey, receiver in said cause, No. 1, in chancery, in pursuance of proceedings theretofore had in said court according to its rules and practice, between complainants and said receiver, and by the terms of said decree the said receiver was ordered to pay said sum to these complainants, and also to pay the fees of Edward T. Austin, master in said cause between complainants and said receiver, amounting to the sum of two hundred dollars; that altho' said decree has been long rendered, and the said receiver been often requested to pay and discharge the same, he has wholly failed and refused so to do, and still refuses, and he informs complainants that he has no funds or property in his hands wherewith to pay the same, and that he has expended all sums under the former orders of the court that have come to his hands as receiver, as he has heretofore reported to the court, and complainants are and have been since the rendition of said decree unable to procure the payment and satisfaction of said decree

by said receiver; that F. P. James, of New York, purchased the premises in the possession of said receiver in said chancery cause No. 1 under the orders and with the approval of this court, and on the day of December, 1871, made and executed his certain bond for fifty thousand dollars, now on file and of record in said court, and a copy thereof is hereto attached, marked "A" and made a part hereof, and referred to for the particular terms and conditions of said bond; that under the terms of said bond the said James is, and heretofore has been, liable to pay the complainants the amount of their said decree, but wholly refuses so to do, tho' often requested.

307 Wherefore complainants pray for such order as the court may be pleased to give against him for the amount of their aforesaid claim, and *and* all costs, and for its process to enforce the same summarily.

And they pray the court to grant them such further general and particular relief and such orders and process herein as may be necessary and proper against either or both said Cowdrey and James for the enforcement of their rights.

McLEMORE & HUME,
Sols. for Complainants.

Evidence of service of the foregoing petition.

THE STATE OF NEW YORK,
County of New York:

Before me, the undersigned notary public, commissioned as such under the laws of the said State, this day personally appeared William Woolff, a citizen of the city of New York, in said county and State, and to me well known as a man of truth and reputable

308 character, who, being duly sworn, deposes and says that he served a copy of the petition whereon this endorsement is written, duly certified to by the clerk of the circuit court of the United States for the eastern district of Texas, under his official seal, as a correct copy of a petition filed in said court 15th April, 1873, by Moody & Jemison, against F. P. James, in chancery cause No. 1, on F. P. James, of said city, county, and State of New York, by delivering to said James in person the said copy, at No. 400, 5th ave., in said city, on 13th day of May, 1873; and the said William Woolff subscribes his name hereto in my presence.

WILLIAM WOOLFF.

In witness whereof I hereto affix my name and official seal this 13th day of May, 1873.

[SEAL.] JAMES H. WHITELEGGE,
Com. of Deeds, N. Y. County.

The foregoing endorsed as follows: "Petition of Moody & Jemison, to compel F. P. James to discharge decree in their favor against receiver, N. A. Cowdrey. Filed May 21st, 1873. C. Dart, clerk."

309 A.

Circuit court of the United States, eastern district of Texas. December term, 1871.

N. A. COWDREY ET ALS.
vs.
GALVESTON, HOUSTON & HENDERSON RAILROAD COMPANY et als.

Undertaking of purchasers to pay any further claim which may be allowed against the receiver.

Whereas in the above-entitled cause the premises in the possession of N. A. Cowdrey, the receiver, have been sold, and the sale thereof confirmed by this court; and whereas the railroad has been in the possession of this court since Feb'y 27th, 1867, to this date, and it is possible that there may still be outstanding and unliquidated claims against the receiver, growing out of the operations of the railroad, such as for lost or damaged freight or injuries to persons or property, or for expenses allowed by the court:

310 Now, therefore, I, Fred. P. James, of the city and State of New York, the purchaser of said premises, do hereby, in consideration of the premises, obligate myself, my heirs, successors, and assigns, in the penal sum of fifty thousand dollars, to pay any and all claims against said receiver which this court shall consider him liable to pay in excess of the funds and property still in the hands of the receiver.

In witness whereof I have hereto set my hand and seal, at the city of Galveston, this day of December, 1871.

F. P. JAMES.

In presence of—
JAMES F. MAGUIRE.

The foregoing Exhibit A endorsed as follows, to wit: "Undertaking of purchaser to pay any future claim which may be allowed against the receiver. Filed Dec. 15th, 1871. Levi Jones, clk."

311 *Motion for rule to show cause.—Filed June 3rd*, 1873.

In U. S. circuit court.

N. A. COWDREY ET AL.
v.
G., H. & H. R. R. CO. ET AL. } Ch. No. 1.

In the matter of Moody & Jemison's application for order of court requiring F. P. James to discharge decree against receiver rendered 6th May, 1872.

Now come said Moody & Jemison, and represent that, on 15th April, 1873, in pursuance of the suggestions of said court, and in order to make good their said decree of 6th May, 1872, they filed their petition in said cause, and asked the court's order requiring F. P. James to discharge the said decree of 6th May, 1872, in accordance with the obligations expressed in his certain bond of December, 1871, which said petition has been served on said James, to wit, on 13th May, 1873.

Wherefore they move the court to enter its rule against the said James, requiring him to appear at the next term of said court and show cause, if any there be, why decree shall not be rendered
312 against him for the amount of petitioner's said decree of 6th May, 1872, to wit, three thousand one hundred and fifty-seven $\frac{48}{100}$ dollars, and all accrued interest, and all such other relief against said James as is prayed for by petitioners in their said petition of 15th April, 1873.

McLEMORE & HUME,
Counsel.

Service of the within motion acknowledged without waiving any objections to the sufficiency of the preceeding action of the applicants, master, or court so far as F. P. James or N. A. Cowdrey are concerned.

WM. G. HALE,
Sol. for James.

JUNE 2, 1873.

The foregoing motion for rule to show cause endorsed as follows: "Motion for rule to show cause. Filed June 3rd, 1873. C. Dart, clerk."

313 *Judg't vs. F. P. James.—From the minutes, Dec. term, Feb'y* 14, '74.

MOODY & JEMISON
v.
N. A. COWDREY, RECEIVER, & F. P. JAMES. } 77.

Intervention in chancery cause No. 1.—N. A. Cowdrey & others vs. Galveston, Houston & Henderson R. R. Co. & others.

This cause came on to be heard at this term, the petitioners, Moody & Jemison, appearing by their counsel; and N. A. Cowdrey, receiver, and F. P. James, appearing by their counsel; and thereupon, the court having examined into all the facts upon which the petitioners' claim is based, and having heard the arguments of counsel, and having duly considered the questions at issue, and the court being now fully advised in the premises, it is ordered that F. P. James, the purchaser of the Galveston, Houston and Henderson Railroad, pay into court, for the use of said Moody & Jemison, the sum of three thousand one hun-
314 dred and fifty-seven dollars and forty-eight cents, with interest thereon at eight per cent. per annum from the 6th day of May, 1872; also the sum of two hundred dollars, allowed the master for his services in this cause, and the costs of this suit; the said sum of money being the amount allowed said Moody & Jemison for freight received by said railroad, and lost during the time the said road was in the hands of the receiver, and for which said James is bound on his bond.

To which ruling of the court the said defendants, by their counsel, except, and give notice of appeal to the next term of the Supreme Court of the United States.

Appeal bond fixed at $4,000.00.

Motion for attach't for contempt.—Filed May 27th, 1874.

MOODY & JEMISON
vs.
F. P. JAMES. } Ch. No. 77. In chancery.

315 Moody & Jemison now come and show to the court that, on 3

June, 1873, they filed in said court a motion for a rule against the said James to show cause why he should not submit to the rendition of a decree against him at the then next ensuing term of the court, for the amount of their unpaid decree against N. A. Cowdrey, receiver, in chancery cause No. 1 in said court, obtained 6 May, 1872, for $3,157.48.

That, in response to said rule, said James appeared before the court at its said next term, and submitted thereto, through statement and argument of his counsel, his response thereto; and thereupon, after full examination of the facts and law, and the hearing of argument of counsel, it was decreed and ordered by said court that said James should pay into court the said sum of $3,157.48, with interest thereon from 6 May, 1872, together with master's fees of $200, for the use of complainants, Moody & Jemison, the same being the amount of said decree of complainants against said receiver in their intervention
316 in chancery No. 1, and held by the court to be chargeable against said James by the terms of his bond, filed in said court in chancery No. 1, in December, 1871.

That altho' said defendant, James, has had full time and opportunity to comply with said decree since the rendition thereof, he utterly fails and refuses to pay said money, or any part thereof, into court, in wilfull contempt thereof and defiance of its said decree.

Wherefore, in consideration of all the facts as disclosed by the records of this court, and the contumacy and contempt of said defendant, complainants pray the court's most gracious writ of attachment may issue instanter against the person of said James, residing in New York, and that he may be seized and imprisoned under the direction of said court, until said contempt is purged by compliance with said decree rendered against him 14 Feb'y, 1874.

F. CHARLES HUME,
Counsel for M. & J.

317 The foregoing motion for attachment for contempt endorsed as follows, to wit: "Motion for attachment for contempt. Filed May 27th, 1874. C. Dart, clerk,"

Final judgment vs. receiver.—From the minutes, May term, May 29, 1874.

N. A. COWDREY ET ALS.
vs.
THE GALVESTON, HOUSTON AND HENDERSON Railroad Co. et als. } No. 1. In chancery.

The above cause coming on to be further heard on the petition of the receiver herein, N. A. Cowdrey, for the confirmation of his accounts, and his discharge as receiver, and upon the report of the master made thereon pursuant to the order of the court made on the day of Feb'y, 1874, and upon the application of the several intervenors appearing in said cause for the adoption of the report of said master, and the disallowance to the receiver of the various items reported by the mas-
318 ter as in suspension for the judgment and decision of the court, and upon the appearance before the court in person and by counsel of the said several parties, and the submission of their several claims on evidence and argument; and the court being fully advised as to the various rights of the several parties as involved in said cause, it is therefore considered, adjudged, and decreed, that the report of Edward T. Austin, master, charging the receiver with a balance of six thousand

nine hundred and sixty-three dollars and ninety-nine cents, as for cash in hand, and disallowing the credits claimed by the receiver for certain items and vouchers specified in said report, amounting to the sum of fourteen thousand and twenty-nine dollars and fifteen cents, be, and the same is hereby, confirmed; and that the receiver has in his hands and is responsible for the sum of twenty thousand nine hundred and ninety-three dollars and fourteen cents, to be disposed of, paid, and
319 distributed as hereinafter directed in and by this decree, and which it is hereby ordered and decreed that he do pay accordingly forthwith; that is to say, it is further ordered, adjudged, and decreed, that out of the said surplus in his hands he do pay, first, the several sums and amounts heretofore found due, and ordered to be paid to the various and respective parties for losses of freight and injury to property occurring under the administration of the Galveston, Houston & Henderson Railroad whilst in the hands of the receiver appointed by this court, the same being as follows:

W. A. Ellis & Co., one thousand and nine $\frac{14}{100}$ dollars, with interest thereon from February 29th, 1872.

Buck & Levy, one hundred and eighteen $\frac{41}{100}$ dollars, with interest thereon from February 21st, 1872.

John W. Norris, one thousand and eighty-six $\frac{80}{100}$ dollars, with interest from May 6th, 1872.

Robert Hoffman, fifty-two $\frac{82}{100}$ dollars, with interest from Feb'y
320 21st, 1872.

Moody & Jemison, three thousand one hundred and fifty-seven $\frac{48}{100}$ dollars, with interest from May 6th, 1872.

C. M. Pearre, eighty-four $\frac{04}{100}$ dollars, with interest from February 15th, 1873.

Richard J. Gallway, eighty-one $\frac{67}{100}$ dollars, with interest from August 26th, 1870.

F. Hallf & Co., five hundred and twelve $\frac{75}{100}$ dollars, with interest from June 29th, 1873.

J. R. Mobley, one hundred and forty-five $\frac{25}{100}$ dollars, with interest from May 15th, 1871.

Kenada & Carter, one hundred and eighty-six $\frac{40}{100}$ dollars, with interest on $162.50 from Feb'y 15th, 1873.

J. Hais & Co., seventy $\frac{90}{100}$ dollars, with interest from Jan'y 1st, 1872.

J. R. White, one hundred and fifty dollars, with interest from May 28th, 1874; the interest on all said amounts being eight per cent. per annum, together with the costs and allowances to the master in each of said cases.

321 And it appearing to the court that claims for similar losses are still pending in said court, as follows: Alford & Veal, for one hundred and eight $\frac{60}{100}$ dollars; R. M. Collins & Co., two thousand and twenty-four $\frac{03}{100}$ dollars; the said receiver is ordered to retain in his hands the sum of five hundred dollars to comply with any order for their payment which may be made by the court in said cases.

After the payment thereof the said receiver shall pay, secondly, the further costs of the clerk and marshal of this court which have accrued in this cause and not heretofore paid, as follows: To the clerk, $911.21 *dollars;* to the marshall, 4.75 dollars; and to the master, in addition to the allowance made for his last report, $100.00.

To J. C. C. Winch, the amount allowed to him as special master in this cause, five thousand dollars, (which includes the sum of five hundred dollars heretofore paid him by the receiver.)

322 To Edward J. Austin, master in chancery, one thousand dollars allowed for his services in the last reference.

To F. F. L'Estrange, three hundred and fifty dollars for his services as an accountant in said reference. And the said receiver is allowed to retain the sum of twenty-five hundred dollars for his services since his last settlement to the present time.

And after the payment of the above amounts, that the said receiver pay, thirdly, to John C. Bullitt the sum of twenty-five hundred dollars, which amount is hereby allowed and directed to be paid to him for his fees and expenses as solicitor and counsel of the trustees in the first and second mortgage bonds in full of his claim presented in this cause.

It is further ordered and decreed that the receiver do then, after paying the above amounts respectively, pay to the complainants the
323 balance due to them for costs and expenses according to the former decree of this court.

It is further ordered and decreed that if the amount in the hands of the receiver should not be sufficient to pay all the said claims and amounts, that then the balance of any costs, fees, and charges due the officers to the court be paid by the complainants.

It is further ordered and decreed that all further proceedings against F. P. James, on his bond for the sum of fifty thousand dollars for the payment of losses by the receiver, be suspended until the court shall further order.

It is further ordered that upon payment by the receiver of the several amounts hereinbefore specified in the order specified, up to the said sum of twenty thousand nine hundred and ninety-three dollars and fourteen cents, he be discharged and exonerated from all further duties and liabilities as such receiver.

324 *Order allowing appeal.—From the minutes, May term, May 29th, 1874.*

N. A. COWDREY AND OTHERS
vs.
GALVESTON, HOUSTON & HENDERSON RAILroad Company and others. } No. 1. In chancery.

The receiver herein, N. A. Cowdrey, on his own behalf, and as complainant herein, on his own behalf, and on behalf of the other complainents in this suit, having given notice in open court of appeal to the next term of the Supreme Court of United States from so much of the decree of this court this day entered herein as refuses to give the receiver a credit on his accounts for the sum of $14,025.15, it being the items suspended by the master to whom the accounts had been referred, and from so much of said decree as gives priority in claim upon the fund in the hands of the receiver known as claimants for lost goods, damages to property, &c., amounting to about the sum of $7,575.61,
325 including interest to June 1st, 1874, and exclusive, so far as the amount is concerned, of cost, but not exclusive, so far as costs and master's fees are concerned, of priority of liens upon said fund, and from so much of said decree as orders and directs anything to be paid to John C. Bullitt, esq., and from so much of said decree as defers or omits directions to the receiver to pay over to the complainants in this cause the amount remaining due to the complainants, alleged by them to be the sum of $36,023.47, with interest from December 15, 1871, under the former orders of this court made at the May term, 1871, the said appeal is allowed by the court, and it is ordered that said N. A. Cowdrey execute

a bond, with good and sufficient surety, to be approved by the court or a judge thereof, in the sum of twenty-five thousand dollars, payable to the clerk of the circuit court of the United States for the eastern district of Texas, sitting at Galveston, for the benefit of and in trust for all
326 the parties named in the decree of said court this day rendered in said cause, as their several interests appear therein, and are specified by said decree, and from which appeal is taken by the said Cowdrey.

27 *Leave to Elson & Templeman & C. M. Pearre to file pet'n vs. rec'v'r & order to refer.—From the minutes, Decr. term,* 1871, *Febr'y* 13, 1872.

N. A. COWDREY & OTHERS
vs.
GALVESTON, HOUSTON & HENDERSON RAILroad Co. & others. } Ch. No. 1.

This day came A. H. Willie, of counsel for Elson & Templeman, and C. M. Pearre, and represents to the court that said parties have certain claims against the receiver for lost freight, now shown to the court here, and move the court that said claims may be filed and referred to a master for examination and report thereon. The premises considered, it is ordered that the said claims be filed and referred to Edward T. Austin, who is hereby appointed special master in chancery for the purpose, to examine and report what amount, if anything, should be allowed and paid thereon.

Petition.—Filed Febr'y 26, 1872.

N. A. COWDREY ET ALS.
vs. } In equity.
G., H. & H. R. R. COMP'Y.

Suit pending for special purposes in the circuit of the U. S., in-
328 cluding the eastern district of Texas, at Galveston.

To the hon. judges of the circuit court as aforesaid:

The petition of C. M. Pearre and Elson and Templeman, complaining of N. A. Cowdrey, who is now acting under the orders of your hon. court as receiver in the above-entitled cause, shows that the said receiver is liable to the said C. M. Pearre for lost goods received by said road of the value of seventy-five dollars, a bill of which is here referred, marked "A," together with bill of lading therefor, the same being one of 9 cases shipped Aug. 19, 1871, on said road, and which was not delivered by said road as they undertook to do; wherefore they bring here the said claim for allowance and reference to master in chancery, and that the said claim for seventy-five dollars be allowed and ordered to be paid by said receiver; and the said Elson & Templeman file their said claim for three hundred and forty-three dollars and forty-seven *dollars* for goods lost by said road, shipped thereon and not delivered to said claim-
329 ants, which claim, duly certified in writing by the proper agent of said comp'y as correct, is herewith shown, marked "B."

Premises considered, these claimants pray that such order be made herein as to the court shall seem right and equitable, and that said receiver be ordered to pay the said claims, &c.

A. H. WILLIE,
For Claimants.

(Endorsed:) Ch. No. 1. N. A. Cowdrey vs. G., H. & H. R. R. Co. Filed Feb'y 26, 1872. Levi Jones, clk.

Paper A referred to in foregoing petition.—Filed Feb'y 13, 1872.

A.

[C. M. Pearre, commission merchant and dealer in staple goods.]

BREMOND, TEXAS, *Dec'r* 8, 1871.

Mess. MOODY & JEMESON,
Galveston.

330 GENTLEMEN: I herewith enclose you the G., H. & H. Railroad's receipt for one case boots & shoes, also invoice bill of same, together with a certificate from the agent of the central road at this station, showing that said case B. & S. has been short since 22d August last; have been working diligently since that time for reclamation and failed thus far. To-day we have seen the agent of the G., H. & H R. road and requests us to forward the enclosed papers to you, to be presented to Mr. N. Colwell, of said road, who, he says, the amt. will be promptly paid by; says the papers are all O. K., and should be paid at once. You will please collect the amount, say seventy-five $\frac{25}{100}$ dollars, and place to my credit, and oblige,

Your obt. servt.,

C. M. PEARRE,
Per L.

Before me, the undersigned authority, personally appeared this day C. M. Pearre, to me well known, who, being duly sworn, doth depose and say that there was shipped to Gardner & Bro., as per bill of lading of date Aug. 19, 1871, by N. H. Ricker, at Galveston, "one case
331 saddlery" and "nine cases" (merchandise;) that one of said nine cases so shipped, and received by Galveston, Houston & Henderson Railroad Co., was lost or mislaid, & that the same was never delivered, but was short, which contained the bill of goods, shoes, &c., as specified in the bill of Gardner & Bro., for seventy-five dollars and twenty-five cents, of date Oct. 11, 1871, and as specified in the certificate of J. M. Dixon, the agent of said road, dated Dec'r 7th, 1872.

C. M. PEARRE.

Sworn and subscribed before me, at Bremond, this 11th day of Febr'y, 1872.

[SEAL.] J. O. HOLT,
J. P., Notary Public, R. C.

(Duplicate.)

GALVESTON, *Aug.* 19, 1871.

Received, in good order, from N. H. Ricker, on board the Galveston, Houston and Henderson R. R., the following-named articles, to be delivered in like good order and condition to C. M. Pearre, at Bremond. Charges, $5.30. Ex. Hewes. #144.

332 Marks.	Articles.
Gardner & Bro., Carolina P. O.	1 case saddlery.
	9 "

333 A.

NEW ORLEANS, *Aug't* 10, 1871.

Gardner Bros. bought of Everett, Lane & Co., manufacturer & wholesale dealer in boots, shoes, brogans, and russetts, No. 72 Canal street—

1	12 men's lone-star pg. ps. boots	6-11	....	72
2	12 " p. cf. " " "	5-9	....	51
3	12 " s. fine " " "	6-9	....	39
4	60 " a. kip " " brogans	6-4	18	90
5	12 " p. cf. " " "	6-4	....	25 50
5	12 " a. " " "	5-10	....	21
6	12 wom's cf. " " ½ bal's	3-7	....	19 50
6	12 " " " " ¼ polish	3-7	....	21
6	12 " " " " bal's	3-7	....	25
7	12 ladies' serge sun polish	2-6	....	25 50
7	12 " " " "	2-4	....	27
7	12 " " " congress	3-7	....	21
4	1 case Boston blacking		....	1
7	3 bottles shoe-polish		....	75
8	½ doz. men's b'k rebrush		32	16
8	½ " " bro. "		40	20
8	½ " " pearl "cas."		39	19 50
8	½ " " black "		36	8
8	½ " " " "		30	15
8	½ " " pearl "		30	15
8	1 " boys' bl'k wool		....	9
	Dray., coop., and hat-cases		....	3 35
8	Cases. In. ⅜ % off 6.20		....	2 32
				$557 42

Carolina P. O., Falls Co., Texas.
(Care C. M. Pearse, Bremond.)
(Care G., H. & H. R. R., Galveston.)

334 HOUSTON & TEXAS CENTRAL RAILWAY COMPANY,
A] *Bremond, Dec.* 4, 1871.

I certify that the books in this office show that one case checked short on W. B. 305, C. B. 229, Aug. 22, marked G. Bros., and so reported, and said report was returned and indorsed, should not be short.

J. M. DIXON, *Agt.*

MARLIN, TEX., *Oct.* 11*th*, 1871.

A] C. M. PEARRE: As we think suffici'nt time been given the R. R. to hunt up our box of shoes, we wish you to collect the amount of bill & charges, & place to our credit. The bill is as follows:

1 doz. ladies' shoes	25 50
1 " " "	27 00
1 " " "	21 00
1 case blacking	1 00
3 bott*els* shoe-polish	75
	75 25

Charges on same from N. O.

If they refuse to pay, you will commens suit in our name at once; but I suppose they will not, as Mr. Madox has collected several bills
335 of the same kind for us. We hope you will attend to this at once.

Respectfully,

GARDNER BRO'S.

[C. M. Pearre, commission merchant and dealer in staple goods.]

A] BREMOND, TEXAS, *Dec'r* 8, 1871.

Mr. A. COLWELL, *Galveston:*

DEAR SIR: I have this day sent Messrs. Moody & Jamison a certified account, together with invoice cost of one case boots & shoes, which has been short since the 22d Aug't last. We have, since the above date, been working diligently to get the papers in proper shape for collection; have this day seen your agent. He says that they are all O. K., and that you will pay on presentation. Hoping that he is correct in his assertion, and that you will attend to this matter promptly,

I am, very respectfully,

C. M. PEARRE,
Per LEVELL.

336 (Endorsed:) Ch. No. 1. N. A. Cowdrey & others vs. Galveston, Houston & Henderson R. R. Co. & others. Claim of C. M. Pearre for lost freight. Filed Feb'ry 13, '72. Levi Jones, clk.

B.

NAVASOTA, TEXAS, 186 .

The Galveston, Houston & Henderson Railroad Campany to Elson & Templeman, Dr.

[Commission merchants & dealers in groceries, plantation supplies, staple dry goods, &c. Terms cash.

1866.				
Oct. 31.	To 1 b. bagging, 360 yds., 38		136 80	
	Drayage		75	
				137 55
Nov. 16.	" 1 b. bagging, 360 yds, 38½		138 60	
	Drayage		75	
				139 35
Oct. 25.	(N. York cost,) 1⅛ box tobacco 114—25—87, 87 lbs		60 52	
	10 %		6 05	
				66 57
				$343 47

I certify that the above goods were received by the G., H. & H. R. R. Co. and shipped from this station, and were received at Navasota, and so receipted at the time of said shipment, and no
337 trace of them could be found.

B. W. LE COMPT, *Agt.*

(Endorsed:) Ch. No. 1. N. A. Cowdrey & others v. G., H. & H. R. R. Co. & others. Claim of Elson & Templeman for lost freight. Filed Febr'y 13, '72. Levi Jones, clerk.

Report of master.—Filed May 23, 1872.

In the circuit court of the United States for eastern district of Texas, at Galveston.

N. A. COWDREY & OTHERS, COMPLTS., *and* THE G., H. & H. R. R. } Chancery No. 1.

Claim of C. M. Pearre and Elson & Templeman against N. A. Cowdrey, receiver.

After due notice to the parties that this claim would be acted

338 on on 16th May, 1872, the master examined the papers accompanying the claim, and reports that there is no proof of the value of the goods shown to be missing, shipped on and lost by the railroad.

The items set out in the bills attached to the claim of Elson & Templeman, bagging and tobacco, are certified by Le Compt, agt., to have been received and shipped and not received at Navasota. Value charged $343.47, not proved, and this claim is dated 1866, prior to this suit. No claim on receiver.

Claim of C. M. Pearre, certified by bill lading to have been shipped, & by his affidavit to have been lost or not delivered. Value charged $75.25, not proved.

This case has been kept open from 16 May to 22d, with notice to the parties, and no proof of value furnished. The master, therefore, on this 22d May, returns the papers into court, and reports no proof of value.

Respectfully submitted.

EDWARD T. AUSTIN.

339 (Endorsed:) Ch. 78. Chancery No. 1. Claim C. M. Pearre and Elson & Templeman against receiver. Report of Edward T. Austin, master, filed May 23d, 1872. Levi Jones, clk.

Order referring.—From minutes May term, June 8th, 1872.

N. A. COWDREY AND OTHERS
v.
GALVESTON, HOUSTON & HENDERSON R. R. Co. & others. } Ch. No. 1.

In the matter of claim of C. M. Pearre & Elson & Templeman against N. A. Cowdrey, receiver.

On motion of A. H. Willie, of counsel for C. M. Pearre & Elson & Templeman, it is ordered that the claims of the petitioners herein be re-referred to Special Master Edward T. Austin for examination and report, according to the practice in such cases.

340 *Order.—From minutes May term, June* 15, 1872.

N. A. COWDREY AND OTHERS
v.
THE GALVESTON, HOUSTON & HENDERSON Railroad Co. and others. } Ch. 1.

Ordered, that the several reports made by the master in this cause, upon applications for damages to goods carried, or received to be carried, on the railroad, or otherwise, during the management thereof by the receiver, after said reports shall have been confirmed, do stand for further consideration as to the order to be taken for the payment of said claims until the next term of the court, with leave to the parties and the receiver to file suggestions in reference to such payment.

Report of master as to Elson & Templeman.—Filed Feb'y 15, 1873.

In the circuit court of United States for eastern district of Texas. In chancery.

N. A. COWDREY ET AL.
v.
THE G., H. & H. R. R. CO. ET AL. } Chan'y No. 1.

341 Claim of Elson & Templeman vs. N. A. Cowdrey, as receiver Report of Special Master Edward T. Austin, to whom the above claim was referred, to inquire what, if anything, was due from the receiver to the claimants for goods shipped and lost on the road while in charge of a receiver.

The master reports that he has examined the papers connected with this claim, and taken the testimony of E. S. Jemison as to values, which he returns herewith.

Accompanying the petition is a bill *is a bill* of goods, bagging, & tobacco, proved to be of the value stated in the bill, $343.47, certified by Le Compt, road agt., to have been received and shipped and lost on the road, but no date. The bill of goods bears date Oct. & Nov., 1866. This date, the only one on the papers, was before the appointment of a receiver, which was in February, 1867. Without some proof as to the date of the shipment, the master cannot report the claim as a claim against N. A. Cowdrey, receiver.

Respectfully submitted.

EDWARD T. AUSTIN,
342 *Special Master.*

The master asks the court for an allowance for his fees, 5.00.

(Endorsed:) Ch. 78. Circuit court U. S. eastern dist. of Texas. In chancery. Chanc'y No. 1. Claim of Elson & Templeman vs. N. A. Cowdrey, receiver. Report Special Master E. T. Austin. Filed Feb'y 15, 1873. C. Dart, clk.

Report of master on claim C. M. Pearre.—Filed Feb'y 15th, 1873.

In the circuit court of the United States for the eastern district of Texas. In chancery.

N. A. COWDREY ET ALS.
vs.
THE G., H. & H. R. R. CO. & OTHERS. } Chancery No. 1.

343 Claim of C. M. Pearre against N. A. Cowdrey, as receiver, for goods shipped on the road Aug. 19th, and not delivered. Report of Special Master Edward T. Austin, to whom this claim was referred to inquire what, if anything, is due the claimant on this account.

The master reports that he finds from the bill lading that the goods were shipped on the road, and from the sworn statements of the claimants & certificate of the clerk of the road that one case was not delivered, and that the same contained shoes, and from the testimony E. S. Jamieson, merchant, taken before the master, & returned with this report, that the said shoes were reasonably worth the sum of seventy-five dollars and seventy-five cents.

The master therefore finds that there is due to the claimant, C. M. Pearre, from N. A. Cowdrey, as receiver, the said sum of $75.25, with 8% interest thereon from the 22 Aug., 1871, 1 year, 5 , 24 day, 8.79, making the total sum due to this date $84.04, (eighty-four $\frac{04}{100}$ dollars.

Respectfully submitted.

EDWARD T. AUSTIN,
Special Master.

The master asks the court for an allowance for his fee for this
344 service, 5.00.

E. T. AUSTIN, *Master.*

(Endorsed :) Ch. 78. Circuit court U. S., eastern dist. of Texas. In chancery. Chanc'y No. 1. N. A. Cowdrey & others vs. The G., H. & H. R. R. Co. & others. Claim C. M. Pearre against N. A. Cowdrey, as receiver. Report of Special Master Edward T. Austin. Filed Feb'y 15, 1873. C. Dart, clk.

Evidence of E. S. Jamieson.—Filed Feb'y 15, 1873.

IN THE MATTER OF THE CLAIM OF ELSON & Templeman
vs.
N. A. COWDREY, RECEIVER, G. H. & H. R. Road.

345 On this 12th December, 1872, before me, Edward T. Austin, special master in chancery, to whom was referred the above claim, came E. S. JAMIESON, witness for claimants, who, being sworn, testified on oath that he is acquainted with the value of boots & shoes in this market, and on examination of bill for boots, &c., charged in said claim, says that the amounts charged therefor are reasonable, and the value of the goods claimed to have been lost by the road; as to the claim for bagging & rope, he says that he is acquainted with its value, and that the price charged therefor is reasonable and proper; also he is acquainted with the value of tobacco, and that the amount charged therefor in said claim, 68 cents per pound, is reasonable & proper; that he is a merchant, and has been one since 1866, & dealt in said articles.

E. S. JEMISON.

Sworn & subscribed before me, Dec'r 12, 1872.

EDWARD T. AUSTIN, *Master.*

346 (Endorsed :) Ch. 78. Chanc'y No. 1. Claim. C. M. Pearre, & Elson & Templeman v. N. A. Cowdrey, receiver. Evidence, E. S. Jamieson. Filed Feb'y 15, 1873. C. Dart, clk.

Order disallowing claim Elson & Templeman.—From minutes Dec'r term, 1873, *Feb'y* 28, 1874.

ELSON & TEMPLEMAN
v.
N. A. COWDREY, RECEIVER, & F. P. JAMES. } Ch. 78.

Petition in chancery cause No. 1, N. A. Cowdrey & others v. Galveston, Houston & Henderson R. R. Co. & others.

This day came on to be heard the report of T. Austin, the master to

whom the claim of the petitioners herein was referred, and having considered the said report, and it appearing that the claim of the petitioners accrued before the appointment of the receiver in this cause, it is
347 not a proper claim against him, and is disallowed as such.

Order allowing claim *C. M. Pearre.—From minutes Dec'r term,* 1873, *Feb'y 28th,* 1874.

C. M. PEARRE
v.
N. A. COWDREY, RECEIVER, & F. P. JAMES. } Ch. 78.

Petition in ch. 1, N. A. Cowdrey et al. v. G., H. & H. R. R. Co. et al.

This day came on to be heard the report of Edward T. Austin, the master to whom it was referred to examine and report the amount due and payable thereon, if anything, and said report having been considered, it was ordered that there be and is hereby allowed said Pearre the sum of eighty-four dollars and four cents for freight lost while the said road was in the hands of the receiver. Wherefore it is ordered that F. B. James, the purchaser of the said railroad, pay into court for the use and benefit of said petitioner the said sum of eighty-four dollars and four cents, also all costs in this behalf incurred, including the sum of five dollars hereby allowed said master for his services in this behalf.

348 *Richard J. Gallway, order leave to file petition.—From the minutes Dec'r term, Feb'ry 18th,* 1872.

N. A. COWDREY AND OTHERS
vs.
GALVESTON, HOUSTON AND HENDERSON R. R. Co. and others. } Ch. No. 1.

On motion of Milton Brown, of counsel for R. J. Gallway, it is ordered that he have leave to file a petition against the receiver in this cause in favor of said Gallway for freight alleged to have been lost.

Petition.—February 16th, 1872.

UNITED STATES OF AMERICA,
Eastern District of Texas:

To the judges of the circuit court of the United States for the eastern district of Texas:

Richard J. Gallway, a resident citizen of the city of Houston, and State aforesaid, brings this his bill against the Galveston, Houston & Henderson Railroad Company, a body corporate incorporated by
348 and in accordance with the laws of this State, and having its principal office in the city of Galveston.

And thereupon your orator complains and says that on the 26th day of the month of August, 1870, he delivered to the agent of the said Galveston, Houston and Henderson Railroad, which was at that time under the control and management of a receiver appointed by this honorable court, 2 sacks of coffee to be shipped to the town of Brenham; that said coffee did not reach its destination, nor has the said road or

its agents indemnified your orator for its loss, or for money expended by him in his efforts to recover it; that said road is justly indebted to your orator in the sum of $94.25.

Wherefore your orator prays that this honorable court will allow said claim and amount, and decree the same to be paid with costs, and that the receiver be ordered to pay the same; and for equity and general relief.

HERBERT & BROWN,
Solicitors.

350 *Receipt of the G., H. & H. R. R. attached to the foregoing petition.*

(Duplicate.)

GALVESTON, *Aug. 26th*, 1870.

Received, in good order, from E. O. Lynch, on the G., H. & H. R. Road, the following-named articles, to be delivered in like good order to F. A. Kent, at Brenham:

Marks.	Articles.
G. B.	2 sacks coffee.
Brenham.	
F. A. K.	B. W. LE COMPT.
R. J. G.	HUSTED.

Bill of items attached to foregoing petition.

2 sacks of coffee.....	337 lbs.
	25 cts. per lb.
	1685
	674
	8425
4 days' waiting at Brenham, @ $2.50 per day.....	1000
	$94.25

(The foregoing petition endorsed as follows, to wit:) "Filed Feb'y 16, '72. Levi Jones. Filed May 28, '72. Levi Jones, clk."

351 *Order to refer.—From the minutes Dec'r term, Feb. 22nd*, 1872.

N. A. COWDREY ET AL.
vs.
GALVESTON, HOUSTON & HENDERSON R. R. CO. et al. } Ch. No. 1.

On motion of Milton Brown, esqr., of counsel for Rich'd J. Galloway, it is ordered that the claim of said Galloway for lost freight, heretofore filed against the receiver in said cause, be referred to Edward T. Austin, esqr., who is hereby appointed special master in chancery for the purpose to examine and report what amount, if anything, should be allowed and paid on said claim.

Report of master.—Filed May 28th, 1872.

In the circuit court of the United States for the eastern district of Texas, at Galveston.

BETWEEN N. A. COWDREY & OTHERS, COMPLTS., *and* THE G., H. & H. R. R. CO. & OTHERS, DEFTS. } Chancery No. 1.

352 In the matter of the claim of Richard J. Galloway vs. N. A. Cowdrey, as receiver, referred to Master Edward T. Austin, by order of court, Feb'y 22nd, 1872, to examine and report what amount, if any, should be allowed and paid on said claim.

After due notice to the parties that the claim would be acted on on 16th May, 1872, no person appearing, the matter was continued open until the 28th May, 1872, when the master was attended by D. G. Herbert, esqr., representing claimants, and on the proof of the bill of lading that the coffee claimed was received by the road while in charge of the receiver, viz, two sacks coffee, and the testimony of J. C. Wallis, of Galveston, sworn, and who testified before the master that the weight of a sack of coffee is (average) one hundred and sixty-five pounds gross, and that coffee (Rio) was worth in Galveston (21) twenty-one cents per pound, highest rate, 26th August, 1871, and twenty-four ¾ cents in February, 1872—

The master finds that there is due the claimant, Richard J. Galloway, the value of the two sacks of coffee, gross, 330 pounds, 24¾ cts.,
353 ($81.67,) eighty-one $\frac{67}{100}$ dollars.

No proof was offered of the value of the coffee at the point of delivery, or rate of freight from Galveston to Brenham.

The master disallowed the claim of time at Brenham.

Respectfully submitted.

EDWARD T. AUSTIN, *Master.*

(The foregoing report endorsed as follows:) "Claim of Richard J. Galloway against N. A. Cowdrey. Report of Master Edward T. Austin. Filed May 28, '72. Levi Jones, clk."

Report of master received.—From rules and orders, May 28, '72.

N. A. COWDREY ET AL. *vs.* G., H. & H. R. R. CO. ET AL. } Chancery No. 1.

This day came Edward T. Austin, esqr., special master in this cause, and filed herein his report upon the claim of Richard J. Galloway against the receiver in said cause referred to him by order of the court.

May 28, '72.

Attest:

LEVI JONES,
Clerk U. S. Cir't Court, E. D. T., G.

354 *Master's report confirmed.—From the minutes Dec'r*, 1873, *Feb'y 17th*, 1874.

RICHARD J. GALLWAY
vs.
N. A. COWDREY, RECEIVER, & F. P. JAMES. } 79.

Petition in chancery, cause No. 1., N. A. Cowdrey & others vs. Galveston, Houston & Henderson Railroad Company & others.

This day came on to be heard the report of Edward T. Austin, esqr., special master in chancery in this cause, to whom it was referred to examine the claim of the petitioner herein, and report to the court the amount properly due and payable thereon; and it appearing to the court that said claim is for freight lost while the said road was in the hands of the receiver, that the value of said goods was the sum of eighty-one $\frac{67}{100}$ dollars, and that the same were received for shipment by said road on the 26th day of August, 1870, and no exceptions having been filed to said report, it is ordered that the same be in all things confirmed.

355 Wherefore it is ordered that F. P. James, the purchaser of the road, pay into court for the use and benefit of said petitioner the sum of eighty-one $\frac{67}{100}$ dollars, with interest thereon at eight per cent. per annum from the 26th day of August, 1870; also all costs of this suit, including the sum of ten dollars hereby allowed said master for his services in this behalf.

This order is made by direction of the Hon. B. Woods, judge U. S. circuit court, 5th circuit, who has ordered that all claims against the receiver for lost freight approved and allowed, that an order be entered for the payment thereof.

To which ruling and order of the court the defendants, by their counsel, except, and gave notice of appeal to the term of the Supreme Court of the United States.

356 *Order leave to F. Halff & Co. to file petition vs. receiver.—From the minutes Dec'r term*, 1871, *Feb'ry* 22, 1872.

N. A. COWDREY ET AL.
vs.
THE GALVESTON, HOUSTON & HENDERSON R. R. Co. et al. } Ch. No. 1.

On motion of M. C. McLemore, of counsel for F. Halff & Co., he has leave to file on behalf of said F. Halff & Co. a petition against the receiver in said cause. It is further ordered that said petition be referred to Edward T. Austin, esq., who is hereby appointed special master in chancery for the purpose, to examine and report to the court what amount, if anything, should be allowed and paid on said claim.

357 *Petition of F. Halff & Co.—Filed Feb'y* 22, 1872.

United States circuit ct.

N. A. COWDREY ET ALS.
v.
G., H. & H. R. R. Co. ET ALS. } Ch. No. 1.

To the honorable the said court:

Your petitioners pray to be allowed to file this their intervention in

the said cause, that the same may be considered by the court, and, on due reference to and approval by such master as the court may indicate, the charges hereinafter made against the said railroad may be paid by the receiver thereof, under the court's most gracious direction. And your petitioners, Felix Halff, Solomon Levy, Alphonse Dreyfuss, and Isidore Feist, residing in Galveston, Texas, and therein conducting the general business of merchants under the firm-name of F. Halff & Co., here show, that—

1st. On 29th August, 1870, they shipped by said railroad to Williams & Peyton 8 cases of merchandise, taking the receipt therefor of the said road by its authorized agent, which said merchandise the said road then and there undertook and promised to deliver by the form of
358 its said receipt or bill of lading to said consignees at Muscle River, in said State; that one of said cases, containing boots and shoes of the value of forty-eight dollars, did not reach its destination, and was not delivered by said road according to the undertaking thereof, as appears from the certificate of A. Angus, hereto attached, of 31st Oct., 1870, the agent of said road.

2d. On 13th Oct., 1871, they shipped by said road, thro' its agent, taking receipt or bill of lading therefor, to James Rice, Wheelock, 17 cases of merchandise, which the said road then and there undertook and promised to deliver to said consignee at Wheelock; that 1 case of said merchandise, of the value of four hundred and twenty $\frac{25}{100}$ dollars, did not reach its destination, and was not delivered by said road according to its undertaking, as appears from the certificate of F. Willis, hereto attached, of 30 Oct., 1871, the agent of said road.

3rd. On 19th Oct., 1871, N. H. Ricker shipped by said road 8 cases of groceries to Fulkerson & Davis, Bryan, by its agent, taking receipt or bill of lading therefor, the said road undertaking and promising to deliver the same to said consignees; that one case of said groceries,
359 of the value of twenty-six $\frac{73}{100}$ dollars, did not reach its destination, and was not delivered by said road according to its undertaking and promise, as appears by the certificate of F. Willis, hereto attached, of 13th Nov., 1871, the agent of said road. And petitioners show that they have been charged with the duty, and directed and empowered by the said respective consignees, to make demand for and collect the said values of goods lost, or not delivered as above alleged; that they have frequently demanded of the receiver of said road the respective sums for said lost goods above named, and have been refused any payment or satisfaction whatever; that they hereto attach the original bills of lading and papers relating to each of said shipments, numbered respectively 1, 2, 3, and make the same a part of this application; and they pray the court to direct a reference hereof to one of its masters, and make such order as will afford the parties in interest an opportunity to take such testimony as may be relevant to the issues herein presented, that the same may be submitted to said master for his consideration.

McLEMORE & HUME,
Sol's for Halff & Co.

360 ALP. DREYFUS,
One of firm of Plaintiffs.

Sworn to & subs'ed before me by Alphonse Dreyfus, Feb'y 21st, 1872.
LEVI JONES, *Clerk.*

Papers 1, 2, 3, *referred to in foregoing pet'n.*

Duplicate.] BREMOND, *Oct.* 31, '70.

I certify that on W. B. 533, C. B. 130, August 30th, 1870, from Ga. R. R., was billed to Messrs. Haswell & Co. seven cases marked Williams & P., one che'ked short, and so reported to the agent at Galveston. (Goods arrived at this station in C. B. 115, W. B. having been changed.)

A. ANGUS,
Agt. H. & T. C. R. W. C'y.

(Endorsed:)

HOUSTON, *Jan'y* 30, '71.

Have no record of C. B. 130 having been billed to this station from Galveston.

R. H. WILLIAMS, *Agt.*

GALVESTON, *August* 29, 1870.

Received from F. Halff & Co. in good order, on board the G., H. & H. R. R., bound for Bremond, the following packages, marked Williams & Peyton, Muzzle River, care Haswell & Son, Bremond: Three (3) cases mdse., five (5) cases B. & S.

361 GALVESTON, HOUSTON & HENDERSON R. R.,
N. A. COWDREY, *Receiver.*

SUPT.'S OFFICE, *Galveston, Octo.* 12, 1871.

I certify that the case here claimed was regu'rly billed from this station to Bremond August 30, W. B. 533, C. B. 130, and that the car was received sealed and intact by the C. R. R. at Houston, Mr. R. H. Williams, ag'nt, has certified, and that the contents of C. B. 130, by this W. B. 533, was transferred by the C. R. R. people into C. B. 115, and W. B. so changed. Witness certificate of Mr. A. Angus, ag'nt of C. R. R.

Respectfully,

E. M. PATRICK,
Pr. B.

MUSCLE RIVER, *Sept. 7th*, 1870.

Messrs. HASWELL & CO.,
Bremond:

GENTS: We received your note yesterday enquiring what kind of a case was missing, and we know we had one case candles missing in the grocery bill, but on opening the dry goods & boots & shoes brought by the bearer of your note, found the case you allude to to be a
362 case of gent's calf-boots, No. from 6 to 10, and cost us in Galveston $48.00, currency. Please look it up soon as possible and forward to—

Yours, truly,

WILLIAMS & PEYTON.

(Endorsed:) 1870. Williams & Peyton, Sept. 7th.

HOUSTON & TEXAS CENTRAL RAILWAY,
FREIGHT OFFICE,
Bremond, Aug. 30, 1870.

M. Haswell & Son to Houston & Texas Central Railway Co., Dr.

[No claims for damaged or lost freight will be allowed unless presented within thirty days after shipment or date of receipt.]

For transportation of freight and charges from Galveston.

W. B.	Car.	Articles.	Marks.	Amount. C'y.	Amount. Coin.
533	130	5 cases 2 cases	Williams & P. "	1 45 3 85	3 60 9 60

Pd.

ANGUS, *Agt.*

363 GALVESTON, TEXAS, *Aug. 27th*, 1870.

Messrs. Williams & Peyton, Muscle Run, bought of F. Halff & Co., importers and jobbers of staple and fancy dry goods, boots, shoes, trunks, valises, &c., Kuhn's building, Strand street. Office in New York, 321 Broadway. Terms, cash.

1 c. 1 dz. men's c'f p'g'd boots, 6/10 ..... $48 00

(Endorsed:) No. 1.

GALVESTON, *Oct. 13th*, 1871.

Received from F. Halff & Co., in good order, on board the G., H. & H. R. R., bound for Bryan, the following packages:

Marked.	Articles.
James Rice, Wheelock. Care W. McIntosh, Bryan.	Six (6) case' mdse. One (1) case hats. Ten (10) cases B. & S. E. M. P. P. B.

BRYAN, *Oct. 30th*, '71.

I hereby certify that there was short on G. R. R. W., J. B., 133 C. B. 417, Oct. 12, one case mark' "Jas. Rice."

Car sealed.

F. WILLIS, *Agt.*

364	Yds.	Price.	
3 pa. ¼ heavy domestic	123	14²	17 84
3 " " " "	124	13	16 12
1 " bed-tick	61²	18	11 07
1 " hickory	56	17	9 52
1 " bleached domestic, Hope	57²	17	9 78
1 " " " Washington	49	13²	6 62
2 " " " Blackstone	93	15³	14 42
1 " " " Peterborough	43²	10²	4 57
1 " " " Chester	52	12³	6 50
2 " " ¾ "	108	7²	8 10
2 " delaine	72³	20	14 55
3 " " all wool	96²	35	33 77
2 " ¼ pecole	56¹	40	22 50
3 " Scotch plaids	117²	37²	44 06
1 " turco	39	27²	10 72
1 " poplin	38	22²	8 55
35 " calico prints	1,552³	11²	178 56
1 case strap & dragge			3 00
			420 25

I do hereby certify the above to be a correct statement of missing goods.

This Oct. 27th, 1871.

JAMES RICE.

365 WHEELOCK, TEXAS, *Dec'r 12th*, 1871.

F. HALFF & Co.

GENTS: I send you, per express:

Gold	201 50
Silver	258 00
Currency	72 00
	531 50

Which you will please place to my credit. I hear nothing from you about the lost goods. What have you done? If they do not pay up promptly, I think that I had best commence suit against the company; what say you? I send you decision of the supreme court. Demand of company at least thirty per cent. on Galveston prices; that is, if you have not settled the matter; or do what you think right in the matter. Trade is tolerable good with me.

Yours, &c.,

JAMES RICE.

Supreme Court decision.

G. W. Cartwright v. J. J. McCook, error from Sabine.—Opinion by Justice Walker.

1. On contracts for the delivery of specific chattels, the general rule of damage for non-delivery, when the price was not paid in
366 advance, is the market value of the goods at the time and place where the delivery should have been made.

2. But if the vendor received the price in advance and failed to deliver the articles, the vendee may recover the highest price of the goods at the place where the delivery should have been made, at any time between the day stipulated for the delivery and the day of the trial. Affirmed.

BRYAN, *Oct. 30th*, 1871.

Messrs. F. HALFF & Co.

GENTLEMEN: Enclosed you will find the certificate of Mr. Willis, agent of the H. & T. C. Railroad at this place, certifying that one of the cases shipped from Galveston, Oct. 12, W. B. 133 C. B. 417, is short. I also enclose you Mr. Rice's invoice of the missing goods. I suppose he should have sworn to the invoice before sending it, but he has not done so. If it is necessary please inform me of the fact, and I will have him to make out another and to make affidavit to the same. I wrote to Mr. Rice to come to Bryan when I ascertained definitely that the
367 case was lost, and I enclose you his letter to me showing why he did not come. If you need any other papers or proof of the loss of the package or the value of its contents, please let me know it and I will render you all the assistance in my power.

Yours, &c.,

WM. McINTOSH.

(Endorsed:) No. 2.

BRYAN, *Dec'r 1*, 1871.

Messrs. F. HALFF & Co., *Galveston.*

DEAR SIRS: We send you bill against G., H. & H. R. R., which you will please try and collect for us and credit to our act.

Yours, resp'y,

FULKERSON & DAVIS.

(Duplicate.)

GALVESTON, *Oct.* 19, 1871.

Received in good order from N. H. Ricker, on board the Galveston, Houston & Henderson R. R., the following-named articles to be delivered in like good order and condition to Fulkerson & Davis at
368 Bryan:

Charges.	Ex. Riverside.
1 bbl. salt.	E. M. P.
3 " sugar.	P. B.
1 " rice.	
3 " syrup.	

BRYAN, TEXAS, *Dec'r* 1, 1871.

G., H. & H. R. R. Bought of Fulkerson & Davis, dry goods and grocery receiving, forwarding, and general commission merchants, Main street:

ISAAC FULKERSON. CHAS. DAVIS

1 bbl. crush sugar, 218—17, 201, @ 13, shipped from N. Y. ex. Riverside	26	13	
To freight on above from N. Y., 30c. p. 100		60	$26 73

Please pay above to F. Halff & Co.

FULKERSON & DAVIS.

I hereby certify that there was short on W. B. 311, C. B. 27, Oct. 7th, 1 bbl., (said to contain sugar.)

F. WILLIS, *Agt.*

BRYAN STA., *Nov.* 13*th*, '71.
Car sealed.

369 BRYAN, *Dec.* 5, 1871.

Messrs. F. HALFF & CO.. *Galveston.*

DEAR SIRS: In reply to yours of 2d, we say if you will examine the certificate of the agt., which we sent you, you will find that he says the car was sealed. The agt. has now left here.

Yours, resp'y,

FULKERSON & DAVIS.

(Endorsed:) No. 3.

(Foregoing petition and papers endorsed on back:) Ch. No. 1. Ch. 80. United St. circuit ct. N. A. Cowdrey v. G., H. & H. R. R. Co. Intervention of F. Halff & Co. 9th May, '72. Notice to Colwell to take up case 16 May, '72. Filed Feb'y 22, '72. Levi Jones, clk.

370 *Notice of fil'g master's report.—From motion docket May* 23, 1872.

N. A. COWDREY & OTHERS
vs.
GALVESTON, HOUSTON & HENDERSON RAILroad Company & others. } Ch. No. 1.

This day came Edward T. Austin, esq., special master in this cause

and files herein his reports upon the claim of F. Halff & Co. against the receiver, referred to him by order of the court.

May 33, 1872.

Attest:

LEVI JONES,
Clk. U. S. Circuit Court E. D. T., G.

371 *Master's report.—Filed May* 23, 1872.

In circuit court U. S., eastern district of Texas.

N. A. COWDREY AND OTHERS, COMPL'TS,
vs.
THE G., H. & H. R. ROAD & OTHERS, DEFENDANTS. } Chan'e'y No. 1.

In the matter of the claim of F. Halff & Co. vs. N. A. Cowdrey, receiver, for lost goods. Report of Master Edward T. Austin, to whom was referred the above claim by order of court of Feb'y 22d, 1872, to examine and report to the court what amount if anything should be allowed and paid on said claim.

The master, after having given due notice to R. Colwell, representing the receiver, that said matter would be acted on on 16th May, 1872, on said day examined the papers filed as proof with said claim, and examined as witness for claimant, under oath, JAMES S. DEFOREST, who testified:

I am shipping-clerk for F. Halff & Co., and have been such since July, 1870. I know the value of goods in this market.

The case of shoes stated in the bill with the claim of F. Halff & Co. shewn to me was forty-eight dollars in this market.

372 The bill of goods shipped to James Rice, and contained in the case alleged to have been lost by the R. R., was worth in this market four hundred & twenty dollars and twenty-five cents.

The sugar I cannot state the value of, as it is not in my line.

JAMES S. DE FOREST.

Also, as witness for claimant, BYRON MCKEEN, who testified on oath that crushed sugar by the barrel was worth in this market from 13 to 16 cents per pound between Oct., '71, and Feb'y, 72.

BYRON MCKEEN.

The master therefore finds from the testimony that there is due to F. Halff & Co. from N. A. Cowdrey, as receiver—

The value of the sugar	$26 13
The value of the case of boots	48 00
The value of the bill of goods	420 25
	$494 38

Four hundred & ninety-four dollars and thirty-eight cents.

With 8 % interest from 1st Jan'y, 1872, on $26.13, 4½ mos	77
& int. on 48.00 from 1st Jan., '71, 4½ mos	5 00
373 Int. on 420.25, 4½ mos	12 60
	$512 75

Five hundred & twelve dollars and seventy-five cents.

Respectfully submitted.

EDWARD T. AUSTIN, *Master.*

MAY 16TH, 1872.

(Endorsed:) Ch. '80. Chancery No. 1. N. A. Cowdry vs. The G., H. & H. R. R. & others. Claim of F. Halff & Co. vs. N. A. Cowdrey. Received report of Master Edward T. Austin. Filed May 23, '72. Levi Jones, clk.

Order confirming master's report, &c.—From the minutes, December term, 1872, Jan'y 29th, 1873.

N. A. COWDREY & OTHERS
v.
GALVESTON, HOUSTON & HENDERSON R. R. Co. & others. } Ch. 1.

In the matter of F. Halff & Co. vs. N. A. Cowdrey, receiver.

374 This cause coming on to be heard upon the report of Edward T. Austin, esq., one of the masters of this court, to whom it was referred to ascertain and report upon the issues therein involved between the parties by the order of said court made 22d February, 1872, which said report bears date 16th May, 1872; and it appearing to the court that said report was duly made after proper notice, and returned by said master, and filed in the cause by the clerk, 23d May, 1872, and that no exceptions have been filed thereto, and that on due deliberation it seems to the court proper and just—

It is ordered, adjudged, and decreed that said report be in all things confirmed. And it appearing to the court that said report ascertains the amount due said F. Halff & Co. by said Cowdrey, as receiver, to be five hundred and twelve $\frac{75}{100}$ dollars, it is further ordered and decreed that the said N. A. Cowdrey, as receiver, pay to said F. Halff & Co., the complainants, the said sum of five hundred and twelve $\frac{75}{100}$ dollars out of any funds he may now or hereafter have as such receiver.

375 And it further appearing to the court that the said master has filed with said report his fee-bill for services rendered in said cause, amounting to twenty dollars, and the same being reasonable and unobjected to, it is ordered that said sum be taxed by the clerk in the bill of costs against the said N. A. Cowdrey, as receiver for the benefit of said master, and to be paid to him out of any funds he may now or hereafter have as such receiver; and it is further ordered that said Cowdrey, as receiver, pay to said F. Halff & Co. their costs in this proceeding, to be taxed out of any such funds aforesaid.

Bond of F. P. James.—Order to record, &c.

N. A. COWDREY AND OTHERS
v.
GALVESTON, HOUSTON & HENDERSON RAILroad Company & others. } Ch. 1.

Upon suggestion of F. C. Hume, of counsel for certain parties in interest, it is ordered that the bond executed by Fred. P. James, in accordance with the orders of this court, and filed in this cause December 15, 1871, be entered on the minutes of the court, which is done in words and figures following, to wit

376 Circuit court of the United States, eastern district of Texas. December term, 1871.

N. A. COWDREY AND OTHERS
against
THE GALVESTON, HOUSTON AND HENDERSON Railroad Company and others.

Undertaking of purchaser to pay future claims which may be allowed against the receiver.

Whereas, in the above-entitled cause, the premises in the possession of N. A. Cowdrey, the receiver, have been sold, and the sale thereof confirmed by this court; and whereas the railroad has been in possession of this court since February 27th, 1867, to this date, and it is possible that there may be still outstanding and unliquidated claims against the receiver, growing out of the operation of the railroad, such as for lost or damaged freight, or for injuries to persons or property, or for expenses allowed by the court:

Now, therefore, I, Fred. P. James, of the city and State of New York, the purchaser of said premises, do hereby, in consideration of the
377 premises, obligate myself and my heirs, successors, and assigns in the penal sum of fifty thousand dollars, to pay any and all claims against said receiver which this court shall consider him liable to pay in excess of the funds and property still in the hands of the receiver.

In witness whereof I have hereto set my hand and seal at the city of Galveston this day of December, 1871.

F. P. JAMES.

In presence of—
JAMES F. MAGUIRE.

Petition of F. Halff & Co. to compel F. P. James to discharge decree against receiver.—Filed June 7th, 1873.

In the circuit court of the United States in and for the eastern district of Texas.

N. A. COWDREY ET ALS.
v.
G., H. & H. R. R. CO. ET ALS. } No. 1. In chancery.

To the honorable the judges of said court:

Felix Halff, Solomon Levy, Alphonse Dreyfus, and Isidore Feist, copartners, residing and doing business in the city and county of
378 Galveston, in said district, under the style of F. Halff & Co., for themselves and all others interested in a like manner, respectfully show:

That on 29th January, 1873, they obtained the decree of this court for the sum of five hundred and twelve $\frac{75}{100}$ dollars against said N. A. Cowdrey, receiver in said cause No. 1 in chancery, in pursuance of proceedings theretofore had in said court, according to its rules and practice, between complainants and said receiver; and by the terms of said decree the said receiver was ordered to pay said sum to these complainants, and also to pay the fees of Edward T. Austin, master in said cause between complainants and said receiver, amounting to the sum of twenty

dollars; that altho' said decree has been long rendered, and the said receiver often requested to pay and discharge the same, he has wholly failed and refused so to do, and still refuses; and he informs complainants that he has no funds or property in his hands wherewith to pay the same, and that he has expended all sums, under the former
379 orders of the court, that have come to his hands as receiver, as he has heretofore reported to the court; and complainants are and have been, since the rendition of said decree, unable to procure the payment and satisfaction of said decree by said receiver; that F. P. James, of New York, purchased the premises in the possession of said receiver in said chancery cause No. 1, under the orders and with the approval of this court, and on the day of December, 1871, made and executed his certain bond for fifty thousand dollars, now on file and of record in said court, and a copy thereof is hereto attached, marked "A," and made a part hereof, and referred to for the particulars, terms, and conditions of said bond; that under the terms of said bond the said James is, and heretofore has been, liable to pay these complainants the amount of their said decree, but wholly refuses so to do, though often requested.

Wherefore complainants pray for such order as the court may be pleased to give against said James, and for its decree against him for the amount of their aforesaid claim and all costs, and for its pro-
380 cess to enforce the same summarily. And they pray the court to grant them such further general and particular relief and such orders and process herein as may be necessary and proper, against either or both said Cowdrey and James, for the enforcement of their said rights.

McLEMORE & HUME,
Solrs. for Complainants.

A.

Circuit court of the United States, eastern district of Texas. December term, 1871.

N. A. COWDREY ET AL.
v.
THE GALVESTON, HOUSTON & HENDERSON Railroad Co. et al.

Undertaking of purchaser to pay any future claims which may be allowed against the receiver.

Whereas in the above-entitled cause the premises in the possession of N. A. Cowdrey, the receiver, have been sold, and the sale thereof confirmed by this court; and whereas the railroad has been in the possession of this court since Febr'y 27th, 1867, to this date, and it
381 is possible that there may be still outstanding and unliquidated claims against the receiver growing out of the operation of the railroad, such as for lost or damaged freight, or for injuries to persons or property, or for expenses allowed by the court:

Now, therefore, I, Fred. P. James, of the city and State of New York, the purchaser of said premises, do hereby, in consideration of the premises, obligate myself, my heirs, successors, and assigns, in the penal sum of fifty thousand dollars, to pay any and all claims against said receiver which this court shall consider him liable to pay in excess of the funds and property still in the hands of the receiver.

In witness whereof I have hereto set my hand and seal at the city of Galveston, this day of December, 1871.

F. P. JAMES.

In presence of—
JAMES F. MAGUIRE.

(Endorsed:) Ch. 80. Ch. No. 1. Circuit court of United St., east'n dist. of Texas. N. A. Cowdrey et als. v. G., H. & H. R. R. Co. et
382 als. Petition of F. Halff & Co. to compel F. P. James to discharge decree against receiver, N. A. Cowdrey. Filed June 7th, 1873. C. Dart, clerk.

Writ to serve copy, pet'n of Halff & Co. on Wm. G. Hale.—Issued June 7, '73.

In the circuit court of the United States for the eastern district of Texas

N. A. COWDREY & OTHERS
v.
GALVESTON, HOUSTON & HENDERSON RAILroad Company and others. } No. 1. In chancery.

The President of the United States of America to the marshal of the eastern district of Texas, greeting:

You are hereby commanded to serve William G. Hale, attorney for F. P. James in the above cause, with the accompanying certified copy of the petition of T. Halff & Co. to compel F. P. James to discharge decree against the receiver, N. A. Cowdrey, the original whereof of said petition was filed in this court June 7th, 1873. Herein fail not.
383 Witness the Hon. Nathan Clifford, senior justice of the Supreme Court of the United States, and the seal of said circuit court at Galveston, June 7th, 1873.

[SEAL.]

C. DART,
Clerk U. S. Circt. Court E. D. T.

Marshal's return.

Received this writ on the 7th day of June, 1873; executed it on the same day of June, 1873, by serving William G. Hale with an accompanying copy of petition certified by the clerk of this court.

TOM. P. OCHILTREE,
U. S. Marshal,
By W. T. CLAYTON, *Deputy.*

Service, $2.00.
GALVESTON, *June* 9, '73.

Marshal's fee, $2.00, paid by plaintiffs.

TOM. P. OCHILTREE,
U. S. Marshal E. D. T.,
By R. HOTCHKISS, *D'p'ty.*

(Endorsed:) Ch. 1. Ch. 80. N. A. Cowdrey & others v. G., H. &
H. R. R. Co. & others. Writ to serve Wm. G. Hale, atty. for
384 F. P. James, with copy of petition of F. Halff & Co. Issued June 7, '73. C. Dart, clk. Returned & filed June 7th, 1873. C. Dart, clk.

Decree vs. James.—From the minutes, Dec'r term, 1873, Feb'y 14, 1874.

F. HALFF & Co.
vs.
N. A. COWDREY, RECEIVER, & F. P. JAMES. } 80.

Intervention in chancery cause No. 1, N. A. Cowdrey & others v. Galveston, Houston & Henderson Railroad Co. and others.

This cause came on to be heard at this term, the petitioners, F. Halff & Co., appearing by their attorneys, and the said Cowdrey, receiver, and F. P. James by their counsel; and thereupon the court having examined into all the facts of this case, and having heard arguments of counsel thereon, and being fully advised in the premises, it is ordered and adjudged that Frederick P. James, the purchaser of the Galveston, Houston & Henderson Railroad, be, and he is hereby, required to pay into court for the use and benefit of said petitioners the sum of
385 five hundred and twelve dollars and seventy-five cents, also *also* all costs in this behalf incurred, with interest from Jan'y 29, 1873, at 8% per annum, said sum being the amount allowed to petitioners by decree of this court of said date, and for which said James is bound on his bond.

To which ruling and order of the court the defendants, by their counsel, except, and gave notice of appeal to the next term of the Supreme Court of the United States.

386 *Petition.—Filed Jan'y 3, 1873.*

In the circuit court of the United States, eastern dist. of Texas.

N. A. COWDREY
v.
GALVESTON, HOUSTON & HENDERSON R. R. } ss. Suit in equity.

To the hon. the judges of said court:

Your petitioner, John R. Mobley, a resident citizen of the county of Freestone, State of Texas, complaining of N. A. Cowdrey, who is, and on 12 May, 1871, was, receiver of this hon. court in charge of the above defendant, the Galveston, Houston & Henderson Railroad, respectfully represents:

That on 12th day of May, 1871, petitioners delivered to and ship'ed on and by said railroad, in good order and condition at the city of Galveston, State of Texas, one trunk of clothing, the property of petitioner, which said trunk was received by defendant then and there in good order and condition, & so receipted for by defendant through and by his agent, E. M. Patrick, p'r Brown, which is more fully shown by a copy of the bill of lading then and there given by defendant to I. Bernstein & Co., who, as agents of petitioner, ship'ed said trunk,
387 which said copy is hereto annexed marked "Exhibit A," and made a part of this petition.

That in consideration of the premises defendant then & there undertook & promised for & in consideration of the usual rates of freight thereon to be paid defendant by petitioners to carry & deliver said trunk in good order to J. C. Yarboro, petitioner's agent at the town of Groesbeck, in the county of Limestone.

That defendant did not safely carry and deliver said trunk pursuant to said contract to said Yarboro, or to petitioner, or to any one else authorized to receive the same by petitioners, but so negligently & careles'ly conducted in regard to the same that said trunk was wholly lost to petitioners.

That, though often requested so to do, defendant has wholly failed to deliver said trunk to petitioner or his agent, said Yarboro.

That the cost & value of said trunk & contents was & is one hundred & forty-five $\frac{25}{100}$, as is more fully shown by a duplicate of the original bill of I. Bernstein & Co., of Galveston, Texas, from whom they
388 were purchased by petitioner, which said copy is annexed as Exhibit B & made part of this petition.

That 10 % is by custom & usage allowed on value of lost freight.

Wherefore petitioner prays judgment against said receiver for value of said trunk & goods & 10 % damages thereon & interest and value, all costs of this suit, for all orders & decrees that may be necessary & for general relief.

MANN & BAKER,
Counsel.

This day personally appeared before me, John R. Mobley, petitioner in foregoing suit, & being by me duly sworn, on oath says that the allegations of said petition, so far as he has personal knowledge thereof, are true, & those of which he is informed by information & belief, he believes to be true.

J. R. MOBLEY.

Subscribed & sworn to before me this 11 day of December, 1872.
[SEAL.] JIM D. MILES,
J. P. F. C., Texas, and ex-officio Notary Public.

Duplicate.] GALVESTON, *May* 12, 1871.

389 Received in good order from I. Bernstein & Co., by the G., H. & H. R. R., to be delivered in like good order at Groesbeck unto J. C. Yarboro, he or they paying freight.

Marks.	Articles.
J. R. Mobley, Butler.	One (1) trunk clothing.

E. M. PATRICK,
P' BROWN.

Original bill of lading produced before the master.
EDWARD T. AUSTIN.

EXHIBIT A.

Original.] GALVESTON, *May* 12, 1871.

Received in good order from I. Bernstein & Co., by the G., H. & H R. R., to be delivered in like good order at Groesbeck unto J. C. Yarboro, he or they paying freight.

Marks.	Articles.
J. R. Mobley, Butler.	One (1) trunk clothing.

C. M. PATRICK,
P' BROWN.

Short.
Checked out short.

390 EXHIBIT B.

GALVESTON, TEXAS, *May* 12, 1871.

M. J. R. Mobley, bought of I. Bernstein & Co., manufacture's and wholesale and retail dealers in ready-made clothing. (One price only.) 127, 129, 131 Tremont street.

1756.	6	dusters, 137½	8 25
2256.	24	pants, 187½	45 00
2182.	12	" 175	21 00
2189.	12	" 175	21 00
2270.	1	suit	6 00
	2	dz. overshirts, 14.00	28 00
	2	" " " 6.50	13 00
	1	trunk & drayage	3 00
			145 25

Duplicate.]

(Endorsed:) No. 1 ch. 82. Equity docket U. S. circuit court, eastern district of Texas. N. A. Cowdrey v. Galveston, Houston & H. R. R. Petition of J. R. Mobley v. N. A. Cowdrey, receiver. Filed Jan'y 3, 1873. C. Dart, clk.

391 *Order to refer claim to master.—From minutes Dec'r term*, 1872, *Jan'y* 3, 1873.

N. A. COWDREY AND OTHERS
v.
GALVESTON, HOUSTON & HENDERSON R. R. Co. & others.

This day came J. R. Mobley, by his counsel, and presenting his petition against the receiver in this cause, N. A. Cowdrey, moved the court that the same be filed and referred according to the practice of the court in such cases. Whereupon it is ordered that the said petition be filed and referred to Edward T. Austin, esquire, who is hereby appointed special master in chancery for the purpose, and that he examine and report to the court what amount, if anything, is due and owing from said receiver to said petitioner upon the claim set up in said petition.

Rule as to notice of hearing.—Filed Feb'y 3d, 1873.

J. R. MOBERLY
v.
GALVESTON, HOUSTON & HENDERSON R. R. Co., through its receiver, N. A. Cowdrey.

Intervention in chancery. Case No. 1, pending in circuit court of the United States, eastern district of Texas.

392 Now comes petitioner, J. R. Moberly, by counsel, and rules said N. A. Cowdrey, receiver of said R. R., to take notice that a hearing will be had on said cause by Special Master E. T. Austin, at his office, corner of Tremont & Strand, in city of Galveston, on 8th day of Feb'y, 1873, at 10 a. m.

MANN & BAKER,
Counsel for Moberly.

(Endorsed:) Ch., 82. J. R. Mobelly v. N. A. Cowdrey, as receiver. Rule as to notice of hearing. Filed Feb'y 3d, 1873. C. Dart, clerk, by Geo. C. Rives, dep.

Master's report.—Filed Feb'y 15th, 1873.

In the circuit court of the United States for the eastern district of Texas. In chancery.

N. A. COWDREY & OTHERS
vs.
THE GALVESTON, HOUSTON & HENDERSON
393 Railroad Co. and others. } Chancery, No. 1.

Claim of J. R. Mobley against N. A. Cowdrey, receiver, for goods shipped on the road and not delivered, referred to Special Master Edward T. Austin, by order of court of January 3d, 1873, to examine and report to the court what amount, if anything, is due and owing from said receiver to the claimant upon the claim set up in the petition.

The master reports that on the tenth day of February, 1873, he took the testimony of Isaac Bernstein as to the shipment and value of said goods, the said Bernstein producing the original bill of lading given by the road for the goods claimed in the petition; and from this testimony the master finds that there is due to the claimant, J. R. Mobley, from N. A. Cowdrey, receiver, the sum of one hundred and forty-five dollars and twenty-five cents, the value of the goods shipped on the road on the 12th day of May, 1871, for account of said J. R. Mobley, and not delivered, with interest thereon, at 8 % per annum, from the 15th May, 1871, making the total sum due, viz:

	For principal	145 25
394	Interest, 1 year 8 mos. 25 days.....	20 10
		$165 35

EDWARD T. AUSTIN,
Special Master.

The master asks an allowance for his fee for this service ten dollars, ($10.)

EDWARD T. AUSTIN,
Special Master.

(Endorsements:) Ch. 82. Chancery, No. 1. N. A. Cowdrey & others v. The G., H. & H. R. R. Co. & others. Claim of J. R. Mobley vs. N. A. Cowdrey, receiver. Report Special Master Edward T. Austin. Filed Feb'y 15, 1873. C. Dart, clk.

Note of receipt of master's report.—From rule & order book, Feb'y 15, 1873.

N. A. COWDREY & OTHERS
v.
G., H. & H. R. R. CO. & OTHERS. } Ch. No. 1.

395 This day came Edward T. Austin, special master in chancery

in this cause, and files herein his report upon the claim of J. R. Mobley against N. A. Cowdrey, the receiver in said cause.

Galveston, Feb'y 15th, '73.

Attest:

C. DART,
Clerk U. S. Circt. Court, E. D. T.

Order confirming master's report.—From the minutes, Dec'r term, 1873, *Feb'y 16th*, 1874.

J. R. MOBLEY
v.
N. A. COWDREY, RECEIVER, & F. P. JAMES. } 82.

Petition in chancery, cause No. 1. N. A. Cowdrey & others v. G., H. & H. R. R. Co. and others.

This day came Mann & Baker, attorney' for the petitioner herein; and thereupon came on to be heard the report of Edward T. Austin, master in chancery, to whom it was referred, to examine and report upon the claim of the petitioner herein; and it appearing to the court that no exceptions have been filed or taken to the report of said master, and that more than thirty days have elapsed since the same was filed, wherefore it is considered and adjudged by the court that the said
396 report be, and the same is hereby, approved, and in all things confirmed. And it further appearing, from said report, that there is due and owing from the said receiver to said petitioner the sum of one hundred and forty-five dollars and twenty-five cents, with interest thereon, at the rate of eight per cent. per annum, from the 15th day of May, 1871, the value of the goods shipped on said road on the 12th of May, 1871, for account of said J. R. Mobley and not delivered; wherefore it is further considered and ordered by the court that F. P. James, the purchaser of said railroad, pay into court, for the use and benefit of said petitioner, the said sum of money and the interest due thereon, together with the costs of this proceeding, including the sum of ten dollars hereby allow' said master for his services in this behalf; for the payment whereof the said James is bound upon his bond.

This order as to payment by James is made by direction of the Hon. W. B. Woods, judge U. S. circuit court, 5th circuit, who has ordered that all claims against the receiver for the lost freight approved and allowed, that an order be entered for the payment thereof.

397 To which ruling and order of the court the defendants, by their counsel, except', and gave notice of appeal to the next term of the Supreme Court of the United States.

398 *Petition of Kenada & Carter.—Filed Jany. 9th*, 1873.

In the circuit court of the United States, eastern district of Texas.

N. A. COWDREY
v.
GALVESTON, HOUSTON & HENDERSON RAILroad. } No. 1, ss., suit in equity.

To the hon. the judge of said court:

Your petitioners, Samuel R. Kenada and William R. Carter, who are resident citizens of the State of Texas, county of Washington, & who on

the 7th April, 1871, were merchants & copartners doing business under the firm name of Kenneda & Carter, complaining of N. A. Cowdrey, who is and on said 7th Apl., 1871, was receiver of this hon. court in charge of the said Galveston, Houston & Henderson Railroad, respectfully represent:

That on 7th April, 1871, petitioners delivered to and ship'ed on and by said railroad, in good order and condition, at the city of Galveston, State of Texas, one trunk of clothing, the property of petitioners, which said trunk was received by defendant then and there in good order and condition, and so receipted for by defendant by his
399 agent, E. M. Patrick, (per Purdy,) which is all more fully shown by a copy of the bill of lading then and there given by defendant to I. Bernstein & Co., who, as agents of petitioners ship'ed said trunk, which said copy is hereto annexed, marked exhibit "A," and made a part of this petition; that in consideration of the premises, defendant then and there undertook and promised, for and in consideration of the usual rates of freight thereon, to be paid defendant by petitioners, to carry and deliver said trunk in good order to Burton & Norris, at Burton, in said county of Washington.

That defendant did not safely carry and deliver said trunk pursuant to said contract to said Burton & Morris, or to petitioners, or to any one authorized to receive the same by petitioners, but so negligently and careles'ly conducted in regard to same that said trunk was wholly lost to petitioners.

That, though often requested so to do, defendant has wholly failed to deliver said trunk to petitioner or his agents, said Burton & Norris.

That the value of said trunk & its contents is one hundred &
400 sixty two $\frac{50}{100}$ dollars, as is more fully shown by a duplicate of the original bill of I. Bernstein & Co., of Galveston, Texas, from whom they were purchased by petitioners, which said copy is annexed as exhibit "B," and made part of this petition. That 10 % is by custom & usage allowed on value of lost freight; wherefore petitioner prays judgment against said receiver for the value of said trunk of goods & 10 % damages thereon, & interest on value of said trunk & contents, all costs of this suit, & petitioner prays all orders and decrees that may be necessary in the premises, & for other further & general relief.

MANN & BAKER,
Counsel.

This day personally appeared before me, a notary public of the State of Texas, S. R. Kenad', a member of the firm of Kenada & Carter, who, having been duly sworn, on oath says that the allegation' of said petition, so far as he has personal knowledge thereof, are true, and those of which he is informed by information & belief he believes to be true.

S. R. KENADA.

Subscribed & sworn to before me this the 3rd day of January, 1873.

401 Witness my hand and notarial seal, at office, in the town of Burton, Washington County, Texas.

[SEAL.] W. C. BRAESCHE,
J. P., Notary Public, W. C.

THE STATE OF TEXAS,
County of Washington:

Before me, W. C. Braesche, a justice of the peace and notary public in

and for the county of Washington, and State of Texas, this day personally appeared J. A. Burton, of the firm of Burton & Norris, and to me well known, who, being by me duly sworn, on oath states that the trunk mentioned in the hereto-annexed petition was never received by them, and that they made diligent enquiry for said trunk.

J. A. BURTON.

Sworn to and subscribed to before me this the 26th day of December, A. D. 1872.

Witness my hand and notarial seal, affixed at office, in the town of Burton, this Dec. the 26th, A. D. 1872.

[SEAL.] W. C. BRAESCHE,
J. P. & Notary Public, W. C.

402 Freight department. Form No. 109.

HOUSTON & TEXAS CENTRAL RAILWAY CO.,
Burton, April 8th, 1871.

M. K. & Co. to Houston & Texas Central Railway Co., Dr.

For transportation of freight and charges from G. R. R. All claims for loss and damage must be made in 30 days from date of bill lading.

No. way-bill.	No. of car.	Articles.	Marks.	Amount.	Amount.
156...	422	2 boxes, 1 trunk			
		2 slabs iron, 2 bdls. iron			
		3 bars iron		1 90	2 90

1 trunk short.

W. B. VANHUTTEN, *Agt.*

(Written across the face :) Paid. Vanhutton.

I certify that I received this statement from the agt.
W. C. BRAESCHE, *J. P., W. C.*

Duplicate.] GALVESTON, *April* 7, 1871.

Received in good order from I. Bernstein & Co., by the G., H. & H. R. R., to be delivered in like good order at Burton, unto Burton & Norris, he or they paying freight:

Marks.	Articles.
Kenneda & Carter, Sandtown.	One (1) trunk clothing.

E. M. PATRICK,
Pr. BROWN.

Original bill lading, produced before master.
EDWARD T. AUSTIN.

403 EXHIBIT A.

(Copy.)

Triplicate.] GALVESTON, *April 7th*, 1871.

Received in good order from I. Bernstein & Co., by the G., H. & H. R. R., to be delivered in like good order at Burton, unto Burton & Norris, he or they paying freight:

Marks.	Articles.
Kenada & Carter, Sandtown.	One (1) trunk clothing.

(S'g'd) E. M. PATRICK,
Pr. PURDY.

404 EXHIBIT B.

GALVESTON, TEXAS, *April* 7, 1871.

M. Kenada & Carter, Sandtown, bought of I. Bernstein & Co., manufacturers and wholesale and retail dealers in ready-made clothing, (one price only,) cor. Strand & Tremont st.:

2258.	2 suits	16 50	33 00	
2222.	3 coats & pants	5 00	15 00	
2159. 2120.	9 " "	4 50	40 50	
2133.	3 " "	5 00	15 00	
1545.	3 " "	7 00	21 00	
2123.	3 " "	7 00	21 00	
	12 pants	1 12½	13 50	
	Trunk & dray		3 50	
	(Duplicate.)			162 50

(Endorsed:) No. 1. Equity docket. Ch., 83. U. S. circuit court, eastern district of Texas. N. A. Cowdrey v. Gal., Houston & H. R. R. Petition of Kenada & Carter v. N. A. Cowdrey, receiver. Filed Jany. 9th, 1873. C. Dart, clk.

405 *Order to refer—From minutes, Dec'r term, Jan'y 9th*, 1873.

N. A. COWDREY AND OTHERS
v.
THE GALVESTON, HOUSTON & HENDERSON R. R. Co. & others. } Ch. 1.

This day came Messrs. Kenada & Carter, by their attorneys, and moved the court for permission to file their petition against N. A. Cowdrey, the receiver herein, for the recovery of the value of certain freight alleged to have been lost while the said railroad was in the hands of said receiver; the premises considered, it is ordered that said petition be filed, and, on like motion, it is ordered that the same be referred to Edward T. Austin, who is hereby appointed special master in chancery for the purpose, and that said master examine into the claim set up by said petitioners, and report to the court the amount, if anything, properly due and payable thereon.

Notice as to hearing.—Filed Feb'y 3d, 1873.

KENADA & CARTER
vs.
N. A. COWDREY, RECEIVER OF GAL., H. & H. R. R. } ss:

406 Intervention in chancery case No. 1, pending in circuit court of the United States, eastern dist. of Texas.

Now come petitioners in above suit, and rule said N. A. Cowdrey, as receiver, to take notice that a hearing on their petition will be had before Special Commissioner E. T. Austin, at his office, corner Tremont & Strand, in city of Galveston, on 8th day of Febr'y, 1873, at 10 a. m.

MANN & BAKER,
Counsel for Petitioners.

(Endorsed:) Ch., 83. Kenada & Carter vs. N. A. Cowdrey. Rule as to notice of hearing. Filed Feb'y 3d, 1873. C. Dart, clk., by Geo. C. Rives, dep.

Report of master.—Filed Feb'y 15th, 1873.

In the circuit court of the United States for the eastern district of Texas.
In chancery.

407 N. A. COWDREY AND OTHERS
vs.
THE GALVESTON, HOUSTON & HENDERSON Railroad Company et al. } No. 1.

Claim of Kenada & Carter against N. A. Cowdrey, receiver, for goods shipped on railroad April 17, 1871, and not delivered, referred to Special Master Edward T. Austin, by order of court of 9th January, 1873, to examine said claim and to report to the court what amount, if anything, is properly due and payable thereon.

The master reports, that on the tenth day of February he took the testimony of Isaac Bernstein, of Galveston, to the fact of the shipment of the goods and their value, under oath, and on inspection of the receipt of the railroad for said goods attached to this report, and from the testimony of Isaac Bernstein, the master finds that there is due to the claimants, Kenada & Carter, from N. A. Cowdrey, as receiver of the said Galveston, Houston & Henderson Railroad, the sum of one hundred and sixty-two dollars and fifty cents, the value of said goods as proved, with eight per cent. interest thereon from the 10th day of April, 1871,

408 Making the total amount due for principal..... $162 50
Interest, 1 year 10 months..... 23 80

$186 30

The master disallows the claim of ten per cent. damages, having no proof of the usage and custom claimed.

Respectfully submitted.

EDWARD T. AUSTIN,
Special Master.

The master asks an allowance of his fee for this service ten dollars, (10.00.)

EDWARD T. AUSTIN,
Special Master.

(Endorsed:) Ch., 83. Chancery, No. 1. N. A. Cowdrey & others vs. G., H. & H. R. R. & others. Claim of Kenada & Carter vs. N. A. Cowdrey, receiver. Report of Special Master Edward T. Austin. Filed Feb'y 15, 1873. C. Dart, clk.

409 *Note of filing master's report.—From rule & order book, Febr'y 15, 1873.*

N. A. COWDREY & OTHERS } Ch., No. 1.
v.
G., H. & H. R. R. CO. & OTHERS. }

This day came Edward T. Austin, special master in chancery in this cause, and filed herein his report upon the claim of Kenada & Carter against N. A. Cowdrey, the receiver in said cause.

Galveston, Feb'y 15, 1873.

Attest:

C. DART,
Clk. U. S. Circt. Court, E. D. T.

Order confirming master's report.—From minutes, Decr. term, 1873, Feb'y 16, 1874.

KENADA & CARTER } Ch., 83.
vs.
N. A. COWDREY, RECEIVER, & F. P. JAMES. }

Petition in chancery, cause No. 1. N. A. Cowdrey & others vs. G., H. & H. R. R. Co. & others.

This day came Mann & Baker, attorneys for the petitioners herein, and thereupon came on to be heard the report of Edward T. Aus-
410 tin, special master in chancery in this cause, to whom it was referred to examine and report upon the claim of the petitioner herein; and it appearing to the court that said report was filed in this court Feb'y 15, 1873, and that no exceptions have been filed thereto, that the claim therein set up was for freight lost while the road was in the hands of the receiver, the value whereof, with interest to the date of said report, was the sum of one hundred and eighty-six dollars and thirty cents:

Wherefore it is considered and ordered by the court that F. P. James, the purchaser of the Galveston, Houston & Henderson Railroad, pay into court, for the use and benefit of said petitioner, the said sum of one hundred and eighty-six dollars and thirty cents, with interest on the sum of one hundred and sixty-two dollars and fifty cents from the 15th day of Feb'y, 1873, said last-named sum being the value of said goods when shipped, interest at 8 per cent. per annum; also, all costs in this behalf incurred, including the sum of ten dollars hereby allowed said master for his services in this behalf, for the payment whereof
411 the said James is bound upon his bond. This order as to payment by James is made by direction of the Hon. W. B. Woods, judge U. S. circuit court, 5th circuit, who has ordered that all claims

against the receiver for lost freight, approved and allowed, that an order be entered for the payment thereof.

To which ruling and order of the court the defendants, by their counsel, except', and gave notice of appeal to the next term of the Supreme Court of the United States.

412 *Petition.—Filed March 12th, 1873.*

N. A. COWDREY
vs.
GALVESTON, HOUSTON & HENDERSON R. R. } ss., No. 1.

Suit in equity in the United States circuit court, eastern district of Texas.

To the hon. the judges of said court:

Your petitioners J. P. Hair & Jonas Johnston, residents of the county of Grimes, State of Texas, complaining of N. A. Cowdrey, who is receiver of this hon. court in charge of the above defendant, the Galveston, Houston & Henderson Railroad Company, respectfully represent: That on 17th March, 1871, petitioners were merchants and copartners, doing business in said county as merchants under the firm-name and style of J. P. Hair & Co.

That on said day petitioners delivered to and shipped on and by said railroad, in good order and condition, at Galveston, in the
413 county of Galveston, State of Texas, one trunk of merchandise, consisting of clothing, the property of petitioners, which said trunk was received by defendant through and by his agent, E. M. Patrick, per Purdy, which is more fully shown by a copy of the bill of lading then and there given by defendants to I. Bernstein & Co., who, as agents of petitioners, shipped said trunk, which said copy is hereto annexed, marked "Exhibit A," and made a part of this petition.

That in consideration of the premises, defendants then and there undertook and promised, for and in consideration of the usual rate of freight thereon, to be paid defendant by petitioners, to carry and deliver said trunk in good order and condition to Elson & Templeman, petitioners' agents at the town of Navasota, in said county of Grimes.

That defendant did not safely carry and deliver to said Elson & Templeman or petitioners, or any one authorized to receive the same by petitioners, but so negligently and carelessly conducted, in regard to the same, that said trunk was wholly lost to petitioners; that, though
414 often requested so to do, defendant has wholly failed to deliver said trunk to petitioners or their agents, said Elson & Templeman; that the cost-value of said trunk & contents was seventy $\frac{90}{100}$ dollars, ($70.90,) as is more fully shown by a duplicate of the original bill of I. Bernstein & Co., of Galveston, Texas, from whom they were purchased by petitioners, which said copy is hereto annexed as "Exhibit B," and made a part of this petition; that 10% damages is by custom and usage allowed on the value of lost freight.

Wherefore petitioners pray decree for the value of said trunk and contents, 10% damages, and interest on the value of the said trunk and goods.

STATE OF TEXAS,
County of :

This day personally appeared before me J. P. Hair, one of the said petitioners, and, being duly sworn, on oath says that the allegations

of said petition, so far as he has personal knowledge, are true, and
415 those of which he is informed by information and belief, he believes to be true.

J. P. HAIR.

Subscribed and sworn to before me this 1st day of March, 1873, to which I certify under my hand and the seal of the district court of Grimes County, the day and date above written.

[SEAL.] J. L. DICKSON, *Clerk*,
By F. BRIGANCE, *Dep'ty.*
MANN & BAKER,
Attys. for J. P. Hair & Co.

Railroad receipt attached to the foregoing petition, entitled "Exhibit A."

(Copy.)

Triplicate.] GALVESTON, *Mch.* 17, 1871.

Received in good order from I. Bernstein & Co., by the G., H. & H. R. R., to be delivered in like good order to Elson & Templeman, at Navasota.

EXHIBIT A.

Marks.		Articles.
J. P. Hair & Co., Anderson. (Over.)	(Signed)	One (1) trunk mdse. E. M. PATRICK, Per PURDY.

416 NAVASOTA, *May* 13*th*, 1872.

This is to certify that the trunk mentioned here was billed on Galveston, W. B. 405, C. B. 307, March 18th, 1871, but was short, and reported so at the time, and that said trunk is still short.

TITE JOHNSON,
Agent.

NAVASOTA, *May* 13*th*, 1872.

BILL OF I. BERNSTEINS & CO., ATTACHED TO FOREGOING PETITION, ENTITLED "EXHIBIT B."

EXHIBIT B.

GALVESTON, TEXAS, *Mch.* 16*th*, 1871.

Mr. J. P. Hair, Anderson, bought of I. Bernstein & Co., manufacturers and wholesale and retail dealers in ready-made clothing, cor. Strand & Tremont st.:

1604.	6 pants, 90	5 40	
1549.	6 " 1.00	6 00	
2120.	6 coats & vests, 4.50	27 00	
2222.	6 " " 5.00	30 00	
	Trunk & dray	2 50	
			70 90

(Duplicate.) "Exhibit B."

417 The foregoing petition, with Exhibits A & B attached, endorsed as follows, to wit, "Petition of intervention of J. P. Hair & Co." "Filed March 12th, 1873. C. Dart, clerk."

Order reff'nce to Austin, master.—From the minutes, May term, May 27, '73.

N. A. COWDREY & OTHERS
vs.
GALVESTON, HOUSTON & HENDERSON R. R. Co. and others. } Ch., No. 1.

On motion of Goe. E. Mann, of counsel for J. P. Hair & Co., it is ordered that the petition filed by him on the 12th day of March, 1873, be referred to Edward T. Austin, who is hereby appointed special master in chancery for the purpose, and the said petition alleging a claim against N. A. Cowdrey, as receiver, for freight alleged to have been lost while said road was in the hands of said receiver; it is ordered that said master inquire thereof, and report to the court what amount, if anything, is due and payable to said petitioners.

418 It further appearing to the court that on the 26th Feb'y, 1873, leave was given to file said petition and the order of reference then as herein made, it is now ordered that these proceedings take effect as of said date, 26th Feb'y, 1873.

Report of master.—Filed June 23rd, 1873.

N. A. COWDREY & OTHERS, COMPLAINANTS,
vs.
THE GALVESTON, HOUSTON & HENDERSON R. R. & others, defendants. } Chancery, No. 1.

Claim of J. P. Hair & Co. against N. A. Cowdrey, as receiver, for goods lost on railroad while in charge of receiver.

I, the undersigned master, to whom was referred the above claim, after having given due notice to Wm. G. Hale, late counsel for the receiver, opened said case for hearing, at my office, on the 19th day of June, 1873, when the claimants introduced ISAAC BERNSTEIN,

419 who, being sworn, on oath stated as follows:

First being shown the original bill of lading given by said road for a *one* trunk of goods, dated Mch. 17th, 1871, & hereto attached, witness stated that the same was the original bill of lading received by him from the road for the trunk of goods claimed as lost in this suit; that the said trunk contained the articles specified in the account attached to the claim and marked "Exhibit B," and that the said Exhibit B sets out the true value of said goods, viz, the sum of seventy $\frac{00}{100}$ dollars.

ISAAC BERNSTEIN.

And the said witness signed and swore to his statements before me.

EDWARD T. AUSTIN,
Master.

And the master finds from the said testimony that the said goods of the value aforesaid, were shipped on the G., H. & H. R. R. on the 17th day of March, 1871; and that there is due the claimants, J. P. Hair & Co., from the said N. A. Cowdrey, as receiver, the sum

420 of seventy dollars and ninety cents with eight per cent. interest from the first day January, 1872—

Making principal sum	$70 90
Int., 8%, 2 years 5½ mos	13 81
	$84 71

Due said claimants at this date eighty-four $\frac{71}{100}$ dollars.
Respectfully submitted.

EDWARD T. AUSTIN,
Special Master.

The master asks to be allowed a fee in this matter for his services, of ten dollars.

EDWARD T. AUSTIN,
Master.

Bill of lading produced in Bernstein's testimony and attached to foregoing report.

Duplicate.] GALVESTON, *March 17th*, 1871.

Received in good order from Isaac Bernstein by the G., H. & H. R. R., to be delivered in like good order at Navasota unto Elson & Templeman, he or they paying freight:

Marks.	Articles.
J. P. Hair & Co., Anderson	One (1) trunk clothing

E. M. PATRICK,
Per PURDY.

(Written across the face:) Original bill of lading produced with testimony of Isaac Bernstein.

EDWARD T. AUSTIN,
Master.

421 The foregoing report endorsed as follows: "Report of Edward T. Austin, special master." "Filed June 23, '73. C. Dart, clerk."

Master's report received.—From rules & orders, June 23th, 1873.

N. A. COWDREY & OTHERS *vs.* G., H. & H. R. R. CO. & OTHERS. } Ch. 1.

This day came Edward T. Austin, special master in chancery, and files herein his report upon the claim of J. P. Hair & Co. referred to him by the order of this court.

Attest:

C. DART,
Clerk U. S. Circ't C't E. D. T.

JUNE 23RD, 1873.

Master's report confirmed.—From the minutes Dec'r term, Feb'y 16th, '74.

84. J. P. HAIR & CO.
vs.
N. A. COWDREY, RECEIVER, AND F. P. JAMES.

Petition in chancery cause No. 7. N. A. Cowdrey and others
422 vs. The Galveston, Houston & Henderson R. R. Co. and others.

This day came Mann & Baker, attorneys for the petitioners, J. P. Hair & Co., and thereupon came on to be heard the report of Edward T. Austin, special master in chancery in this cause, to whom it was referred to examine the claim of the petitioners, and to report to the court the amount properly due and payable thereon.

And it appearing to the court that said report was filed on the 23rd day of June, 1873, and no exceptions having been filed thereto, it is thereupon considered by the court that the said report stand approved and in all things confirmed; and it further appearing from said report, that there is due the petitioners for freight received by said receiver on said railroad for transportation and not delivered, the sum of seventy dollars and ninety cents, with eight per cent. interest thereon from the first day of January, 1872:

Wherefore it is considered and ordered that F. P. James, the purchaser of said railroad, pay into court, for the use and benefit of
423 said petitioners, said sum of money and interest; also all costs incurred in this behalf, including the sum of ten dollars hereby allowed said master for his services in this behalf, for the payment whereof the said James is bound upon his bond.

This order as to payment by James is made by direction of the Hon. W. B. Woods, judge U. S. circuit court 5 circuit, who has ordered that all claims against the receiver for lost freight, approved and allowed, that an order be entered for the payment thereof; to which ruling and order of the court, the defendants by their counsel except', and gave notice of appeal to the next term of the Supreme Court of the United States.

424 *Leave to J. R. White to file pet'n vs. rec'v'r, &c.—From minutes Dec'r 21, 1871.*

N. A. COWDREY AND OTHERS
vs.
THE GALVESTON, HOUSTON AND HENDERSON Railroad Company and others. } Ch. No. 1.

On motion of A. N. Mills, of counsel for John R. White, he has leave to file, on behalf of said White, a petition against the receiver in this cause, and on motion of said attorney and by consent of the counsel for said receiver, it is ordered that it be referred to Edward T. Austin, who is hereby appointed special master in chancery for the purpose, to examine and report to the court what amount, if anything, should be allowed and paid on said claim.

Petition.—Filed Dec'r 21, 1871.

In the circuit court of the United States for the eastern district of Texas.

To the honorable the judge of the circuit court, 5th circuit, for the eastern district of Texas:

Your petitioner, John R. White, a resident citizen of the county of

Galveston, State of Texas, would respectfully represent into your
425 honor that on and prior to the 21st day of November, A. D. 1871,
he was the owner of a valuable bay horse wo'th the sum of one hundred & fifty dollars, and that said horse was on said 21st day of November, 1871, run over by the freight-train and engine thereto attached belonging, and so violently struck and thrown from the track as to render him (said horse) perfectly valueless. That the injuries inflicted on said animal were caused by the negligence and gross misconduct of the servants and agents of said railroad company or the person in charge thereof. Petitioner charges that the engine and cars inflicting the injuries aforesaid, belonged to and were a part of what is known as the Galveston, Houston & Henderson Railway Co., and now in the hands of and under the controll of a receiver appointed by this hon. court. Petitioner further charges that the horse belonging to him is the same one spoken of and alluded to in the affidavit of E. Phelps, J. Burefer, Rob't Goldsmith, & W. H. Milton, which said affidavits is hereto attached and asked to be heard and taken as part hereof.

Petitioner alleges that by reason of the injuries inflicted upon
426 his said property by said railroad co., their servants and agents,
he ha been damaged in the sum of three hundred dollars; that said horse is utterly worthless now and ever will be, caused by the said injuries so inflicted.

Petitioner therefore asks that he may be allowed out of the money now in the hands of the court or its receiver the amount of the value of his said horse and damages for the wrongful injuries inflicted thereon, and for such other and further orders and decrees as seem right and proper and that justice & equity demand.

JOHN R. WHITE.

Sworn & subscribed before me Dec. 20th, 1871.
[SEAL.] R. D. JOHNSON,
Notary Public.

THE STATE OF TEXAS,
County & City of Galveston:

I hereby certify that on the morning of the twenty-first of November last, between seven & eight o'clock, as near as I could tell, not
427 having the time, the freight-train of the Galveston, Houston &
Henderson R. R. passed my house, which is near the track of said road, on the south side of said railroad track, and about three qua'ters of a mile from the depo' of said R. R. in Galveston City. Just after the train past the house I heard the whistle and stepped to the dore, and looked out and *and* saw a bay horse running ahead of the train on the track, and just as the horse got neare a culvert, in the road, the whistle blowed a few times and the engine struck the horse and knocked him off the track. I went up to where the horse was lying in the mud ab'ut one mile from the depo', about twelve o'clock the same day, and tryed to ra'ze the horse up, but he was so badly *heart* that I failed to get him up and came of' and left him lying there. Ab'ut two o'lock the same evening I saw three gentlemen at the place trying to get the horse out of the mud. I then started out to see the horse the same t'm, out of sympathy, to see how bad he was hurt. I met a gentleman lead-
428 ing the horse, by the name of J. R. White; told me the horse was
his, and I told him he was so badly hurt he could not get him home, as his eyes ware bulged part of the way out of his head besides a number of other severe wounds inflicted on dif'erent parts of the horse,

so I would say enough to make him totely worthless. The grad' of said railroad track wheir the horse was knocked of the track is some three or four feet heigh.

his
J. + BUREFER.
mark.

STATE OF TEXAS,
County of Galveston:

Before me, Richard Nelson, a notary public in and for said county, duly commissioned and sworn, personally appeared J. Burrifer, of county, to me known, and made oath that the above as being true and correct to the best of her knowledge and belief, and signed the same in my presence.

In testimony of which I hereto set my hand official seal this the 9th day of Dec'r, A. D. 1871.

[SEAL.]

R. NELSON,
N. P., Galveston County.

429 THE STATE OF TEXAS,
County of Galveston:

I hereby certify that on the twenty-first of November last, I was near the Galveston, Houston & Henderson R. R., about one mile from the depot of said road, in Galveston City; I heard the carrs whistle, and look and saw a bay horse on the track running ahead of the en*jian*, the carrs whistle three times, and knocked the horse off the track; this was about seven or eight o'clock as near as I could tell, not having any time-*peace*, and it was the freight-train that knocked him off. I saw the horse about one o'clock and he was still lying where the train left him.

his
ED. + PHELPS.
mark.

STATE OF TEXAS,
County of Galveston:

Before me, Richard Nelson, a notary public in and for said county, duly commissioned and sworn, personally appeared Ed. Phelps, of county,
to me known, and made oath that the above as being true and
430 correct to the best of his knowledge and belief, and signed the same in my presence.

In testimony of which I hereto set my hand official seal this the 9th day of December, A. D. 1871.

[SEAL.]

RICHARD NELSON,
Notary Public, Galveston County.

STATE OF TEXAS,
County of Galveston, in City of Galveston:

We, the undersigned, R. Goldsmith and H. W. Miller, w*as* called upon by J. R. White to go with him to the Galveston, Houston and Henderson Railroad track, about one mile west from the depo', to identify a certain bay horse belonging to J. R. White, and to appraise said horse, and also to assess the damage done to the said horse by the freight train of said road, and R. Goldsmith went with J. R. White, and found said horse near the north side of the track, bruised and so crippled that he is now totel'ey valueless, and we hear by state, under oath, the said horse, before he was damaged by said railroad, was worth in cash

431 one hundred and fifty dollars, and the service of said horse is worth one dollar and fifty cents per day, besides his board, which wil' be worth twenty-five dollars per month. The loss of said horse is the full amount of his value to said White, besides a considerable damage to the same, which we believe him to entitled , by said road paying for the same. Said ascident occurred some time during the day on 21st (twenty-first) November, 1871.

ROBERT GOLDSMITH.
H. W. MILLER.

Sworn to and *ass*igned before me.

Sworn & subscribed before me this 22d day of November, 1871.
[SEAL.] R. D. JOHNSON,
Notary Public.

(Endorsed:) Ch. No. 1. Ch. 75. N. A. Cowdrey et als. v. G., H. & H. R. R. Co. et als. John R. White vs. Receiver of G., H. H. R. R. Co. Application for payment of value of horse. Filed Dec'r 21, '71. Levi Jones, clk.

432 MAY, '72.—Notice to Colwell to take up case 16 May, '72.

Master's report.—Filed May 23, 1872.

In circuit court of the United States, eastern district of Texas. In chancery.

N. A. COWDREY ET ALS., COMPL'TS,
vs.
THE G., H. & H. R. R. CO. ET ALS., DEF'TS. } No. 1.

In the matter of the claim of J. R. White against N. A. Cowdrey, receiver, referred to Master Edward T. Austin to examine said claim, and to report what, if anything, should be paid thereon.

The master finds from the testimony that a bay horse, the property of J. R. White, was fatally injured by the G., H. & H. R. R. trains on the 21st November, 1871, and that the said horse was of the value of one hundred and fifty dollars. He therefore finds that there is due to the claimant, J. R. White, from N. A. Cowdrey, as receiver, the value of the

horse	$150 00
433 and interest thereon at 8% from 1st January, 1872, 4½ mos	4 50

one hundred and fifty-four $\frac{50}{100}$ dollars.

Respectfully submitted.

EDWARD T. AUSTIN, *Master.*

MAY 16, 1872.

Notice of filing master's report.—From rule & order book, May 23, 1872.

N. A. COWDREY & OTHERS
vs.
GALVESTON, HOUSTON & HENDERSON RAILroad Company & others. } Ch. No. 1.

This day came Edward T. Austin, esq., special master in this cause,

and filed herein his report upon the claim of J. R. White against the receiver, referred to him by order of the court.

May 23, 1872.

Attest:

LEVI JONES,
Clerk U. S. Circuit Court E. D. T., G.

Order confirming master's report.—From the minutes May term, May 28, 1874.

J. R. WHITE
vs.
N. A. COWDREY, RECEIVER. } Ch. 75.

Petition for injury to property, filed in Ch. 1, N. A. Cowdrey et al. v. G., H. & H. R. R. Co. et al.

434 This day came on to be heard the report of Edward T. Austin, the special master in this cause, to whom it was referred to examine and report upon the claim of the petitioner herein, and it appearing to the court that said report was filed in this court May 23d, 1872, and no exception being filed thereto, it is ordered that the said report stand approved and in all things confirmed; and it appearing from said report that there is due the petitioner from the receiver the sum of one hundred and fifty-four $\frac{50}{100}$ dollars, the same is hereby taken and established as an approved claim against said receiver for said sum, to be paid by him in accordance with the decree in this cause.

435 *Petition of Alford & Veal.—Filed June 7th, 1873.*

U. S. circuit court.

N. A. COWDREY ET ALS.
v.
G., H. & H. R. R. CO. ET ALS. } Ch. No. 1.

To the honorable the judges of said court:

Your petitioners, Geo. F. Alford and Wm. G. Veal, residents of said eastern district, and copartners and merchants in the city and county of Galveston, within the jurisdiction of said court, under the firm-name of Geo. F. Alford & Veal, during the period hereinafter referred to, pray permission to file this their intervention in said cause, that the same may be considered by the court, and upon due reference to and approval by such master as the court may indicate, the charges hereinafter made against the said railroad may be paid by the receiver thereof under the court's most gracious direction.

Petitioners show that—

1st. On 11 October, 1870, they shipped by said road to J. J. Lewis & Co., Bremond, Texas, 15 bundles arrow-ties, taking the bill of lading of said road, by its authorized agent, therefor, whereby said road
436 then and there undertook and promised for valuable consideration to deliver the same to said consignees, Lewis & Co., at Bremond, in the usual course of transportation; but said road wholly failed to deliver said goods according to its contract, or in any other manner, whereby the value thereof was wholly lost to petitioners and said consignees, the same amounting at that time to forty-two gold dollars.

2nd. On 28th December, 1870, they shipped to Gaston & Campbell,

Bremond, by said road, thro' its agent, taking bill of lading therefor, 8 bundles of ties, of the value of twenty-two $\frac{40}{100}$ dollars, gold, which the said road then and there undertook and promised to deliver to said consignees at Bremond for valuable consideration, but said road wholly failed to deliver said goods according to its contract, or in any other manner, whereby the said value thereof was wholly lost to petitioners and the said consignees.

3d. On 19 December, 1870, they shipped to C. H. Randolph & Co., Bryan, & by said road, thro' its agent, taking bill of lading there-
437 for, 2 pieces of bagging, containing 201 yards, of the value of forty-eight $\frac{24}{100}$ curr'y dollars, which the said road then and there undertook and promised to deliver to said consignees at Bryan for valuable consideration; but said road wholly failed to deliver said goods according to its contract, or in any other manner, whereby the said value thereof was wholly lost to petitioners and the said consignees.

4th. On 20th December, 1871, they shipped to J. J. Lewis & Co., Kosse, by said road, thro' its agent, taking bill of lading therefor, 2 rolls wire, of the value of twenty-nine $\frac{50}{100}$ currency dollars, which the said road then and there undertook and promised to deliver to said consignees at Kosse; but said road wholly failed to deliver said goods according to its contract, or in any other manner, whereby the said value thereof was wholly lost to your petitioners and the said consignees.

And petitioners show that they have been charged by said respective consignees with the duty, and directed and empowered by them to make demand for and collect the value of said goods lost or not delivered, as alleged; that they have frequently demanded the same
438 of said receiver, and while the facts of said non-delivery and the justice of petitioners' claim have been always acknowledged by the road thro' its duly accredited and authorized agents, yet the said receiver has heretofore wholly failed to pay the same, or any part thereof, and still refuses so to do, or to afford petitioners any payment or satisfaction whatever.

Wherefore they pray the court to direct a reference hereof to one of its masters, and make such order as will afford the parties in interest opportunity to take testimony herein for submission to said master.

And they show to the court that Wm. G. Hale, esq., of counsel for the said receiver, is now within the jurisdiction of the court, in the city of Galveston, and they pray for such process to him as may be proper for the information herein of said receiver.

McLEMORE & HUME,
Sols. for Petitioners.
W. G. VEAL,
One of firm of Geo. F. Alford & Veal.

Sworn to & subscribed before me June 7, 1873.

C. DART,
Clerk U. S. Circ't Ct. E. D. T., G.

439 (Endorsed:) Ch. No. 1, ch. 86. United St. circuit ct. N. A. Cowdrey et al. v. G., H. & H. R. R. Co. et als. Intervention for Alford & Veal, filed June 7th, 1873. C. Dart, clerk.

Order to file & refer to master.—From minutes Dec'r term, 1873, Feb'y 20th, 1874.

ALFORD & VEAL
v.
N. A. COWDREY, RECEVER, & F. P. JAMES. } 86.

Petition in chancery. Cause No. 1, N. A. Cowdrey & others v. Galveston, Houston & Henderson Railroad Co. & others.

This day came the petitioners herein, Alford & Veal, by their attorneys, and presenting their petition against N. A. Cowdrey, receiver, for an allowance for freight lost while the road was in the hands of said receiver, moved the court that said petition be referred to a master, to examine and report thereon. The premises considered, it is ordered that the said petition be referred to Edward T. Austin, who is hereby
440 appointed special master for the purpose, to examine into the claim of the petitioners herein, and report to the court what amount, if anything, is properly due and payable thereon.

Master's report.—Filed May 26, 1874.

In the district court of the United States for the eastern district of Texas.

N. A. COWDREY ET AL.
vs.
G., H. & H. R. R. ET AL. } Chanc'y No. 1.

Intervention claim of Alford & Veal for allowance of cost of lost goods, referred to Special Master Edward T. Austin.

On the day of May, 1874, the master was attended by the parties complainant, and took testimony of sundry witnesses, reported herewith, in support of their claim, and from said testimony, and the papers and vouchers filed with the claim, the master finds that there was shipped by the claimants on said road, on the 19th Dec'r, 1870, two rolls of bagging, to be shipped over the road and so receipted
441 for and not delivered; that there were two hundred & one yards of bagging, worth, then, 30c. per pound, is..... $60 30
The road paid fall in value 6c. per pound..... 12 06

Leaving balance due..... ..... 48 24

That complainant shipped on 20 Dec., 1870, 2 rolls fencing wire receipted for, not delivered; and that the same weighed 230 lbs., and that the same has been worth since 12½ cents per pound, & amounts to $29.50.

That on the 28th Dec'r, 1870, defendant shipped, by said board, 8 bales arrow-ties receipted for and not delivered; that the ties weighed 448 pounds, and have been worth since that time 9 cts. per pound, but the claim is for 5 cts. per pound, 22.40.

That on Oct. 11, 1874, complainants shipped 15 bundles arrow-ties, receipted for & not delivered, that said ties weighed 840 pounds and have been worth since that time 9 cents per pound, but the claim is for 5 cents per pound, 42.00.

And the master finds that there is due from N. A. Cowdrey, as receiver, to the said Alford & Veal the said several sums, viz:

442	For bagging	48 24
	" wire	29 50
	" For ties, 22.40, 42.00	64 40
	In all	$142 14
	With interest from 1st Jan'y, 1871, to this date, May 19, '74, 3 y'rs, 4 mo's, & 19 days	38 52
		$180 66

Respectfully submitted.

EDWARD T. AUSTIN.

The master reports the testimony taken in this cs., the deposition of C. H. Cooper, S. C. Kirkland, George F. Alford, and C. R. Hughes.

N. A. COWDREY ET AL., COMPL'TS, *and* G., H. & H. R. R. Co. ET AL., DEF'TS. } Chanc'y No. 1.

Claim Alford & Veal vs. N. A. Cowdrey, receiver.

On this 16th May, 1874, the claimants introduced, before Edward T. Austin, special master in chancery, C. H. COOPER, who, being sworn and examined, on his oath testified as follows:

My business is cotton clerk, with Alford, Miller & Veal; am
443 well acquainted with the market value of ties and bagging. On 11 Oct., 1870, ties were worth 5 cents per pound gold. Bengal bagging was worth Dec'r 9th, 1870, twenty-four cents per yard currency; know nothing of the loss of the goods claimed in this case.

C. H. COOPER.

Sworn to.
EDWARD T. AUSTIN,
Special Master.

Claimants also introduced T. E. KIRKLAND, who was sworn and examined, and on his oath testified:

I am book-keeper for Steele & Wood, hardware merchants. I am acquainted with the price of fencing-wire; in 1870, was worth 12½ cents per pound currency.

T. E. KIRKLAND.

EDWARD T. AUSTIN,
Special Master.

In the district court of the United States for the eastern dist. of Texas.

Claim of Alford & Veal vs. N. A. Cowdrey, as receiver.

444 GEO. F. ALFORD, being sworn and examined on the part of the claimants, on his oath deposes and says, that he is a member of the firm of Geo. F. Alford & Veal; that as to their claim for two rolls of bagging, he knows that the two rolls of bagging were kept at the depot of the G., H. & H. R. R. to Aug 25th, '71, and he says that the R. R., on account of its long detention, agreed, and did pay them the fall of price from the

time of shipment Dec'r 19, '70, 6 cents per pound, and also agreed to ship same when ordered; that one roll of the same was subsequently delivered by the road to another party, and the remaining one was so badly damaged that we refused to receive it. The bagging when shipped was worth 30 cents per yard, but the road paid 6 c. for loss on valūe, and that the claim is for 24 cents per yard; there were two hundred & one yards in the two rolls entirely lost to his firm.

The item of two rolls of wire he knows were shipped by the road, and the consignees have always denied its receipt. The two items of
445 ties, 8 bundles and fifteen bundles, he knows were shipped, and consignees have always denied their receipt.

GEO. F. ALFORD.

He says that ties are now worth 9 cents per pound, thoug' charged at 5$.

C. R. HUGHES, being sworn and examined on his oath on the part of the claimants, deposes and says: He was in the employment of Alford & Veal in 1870, that he was shipping-clerk, and engaged in filling orders for bagging & ties, & other things for their country customers. The items for bagging & ties he knows were shipped by the G., H. & H. R. R., as he shipped them, as the receipts which are in his handwriting will show; witness presented a bill to Mr. Colwell, agent of the road, for the various items mentioned as lost, and Colwell promised to find them or pay for them. They have never been paid for or found, to deponent's knowledge.

C. R. HUGHES.

446 (Endorsed:) Ch. 86. Chancy No. 1. N. A. Cowdrey et als. vs. G., H. & H. R. R. et al. Report of Special Master Austin on intervention claim of Alford & Veal. Allowed 180.66 principal & int. to 9th May, '74. Master's fee, $10.00. Filed May 26, 1874, C. Dart, clk.

G., H. & H. R. R. to Geo. F. Alford & Veal.

For two rolls bagging lost in transit, consigned to C. H. Randolph & Co., Bryan, Dec. 19th, 1870.

2 rolls Bengal bagging, 201, @ 24c.....48 24

(Triplicate.)

GALVESTON, TEXAS, *December 19th*, 1870.

Received in good order from Geo. F. Alford & Veal, on board the Galveston, Houston & Henderson Railroad, the following-named articles, to be delivered in like good order to C. H. Randolph & Co. at Bryan:

Marks.	Articles.
Burkhalter.	2. Two rolls Bengal co. bagging.

(Signed) R. W. LECOMPTE.
DRULON.

447 BRYAN, TEX., *Jan'y* 17, 1871.

GENTS: We send you S. D. for thirty-three $\frac{20}{100}$ gold dollars, which please convert and place to credit of J. A. Evans, & oblige,
Yours, truly, &c.

C. H. RANDOLPH & CO.

Messrs. A. & VEAL,
Galveston, Texas.

(On back of foregoing letter :) Jerry Burkhalters' bagging has never come to hand yet. He was here yesterday and we supplied him from ours. Please see if it (his) ever got off, as we need it.

C. H. R. & CO.

G., H. & H. R. R. to Geo. F. Alford & Veal.

For 2 rolls fencing wire ship'ed Dec. 20th, 1870, by Steele & Wood, consigned to J. J. Lewis & Co., Kosse, W. B. 419 C. B. 12.

Currency.

2 rolls fencing wire 230, @ 12½ $29 50

(Copy.)

GALVESTON, *Dec. 20th*, 1870.

448 Received in good order from Geo. F. Alford & Veal, by the Galveston, Houston & Henderson Railroad, the following-named articles, to be delivered in like good order to J. Lewis & Co., at Kosse.

Marks.	Articles.
S. K. H.	2 rolls wire.
Waxahachie.	
(Signed)	B. W. LECOMPT.
	HUSTED.

WAXAHACHIE, *Apl. 12th*, '71.

Messrs. ALFORD & VEAL:

GENTS: You will confer a favor on *on* me if you will inform me who is in fa'lt that I do not get the following freight purchased by you for me, to wit: 6 bdls. ties, purch. Sept. 3rd, '70; 9 bdls. ties, purch. Nov. 24, '70; 4 lbs. twine, purch. same date; 230 lbs. galvanized fence wire, purch. Dec. 15, '70; all consigned to J. J. Lewis & Co. I have been greatly disappointed about said freight. H. H. Dunn told me that he saw you & Lewis concerning my freight, & that it would be looked up or
449 find who was in fa'lt, but I have not heard a word it as yet. I will expect to he'r from you soon.

Yours, resp.,

S. K. HILBURN.

G., H. & H. R. R. to Geo. F. Alford & Veal.

For 8 bdls. arrow-ties lost in transit, consigned to Gaster & Campbell, Bremond, Dec. 28, 1870.

Gold.

8 bdls. arrow-ties, 448, @ 5c $22.40

GALVESTON, *Novr. 28th*, 1870.

Received in good order from Geo. F. Alford & Veal, by the G., H. & H. Railroad, to be delivered in like good order at Bremond to Gaston & Campbell, he or they paying freight.

Marks.	Articles.
Wm. Stevens, Butler.	2 rolls Bengal bagging.
	8 bdls. arrow-ties.
Care of Whitt & Waldrum, Butler.	
Beauchamp & Terry, Dallas.	10 bdls. arrow-ties.
Rec'd J. Crawford, Palestine.	8 bdls. arrow-ties.
	N. H. RICKEN.
	PERRY.

450 GROESBECK, TEXAS, *Sept.* 20, 1871.

Mess. ALFORD & VEAL,
Galveston:

DEAR SIRS: Enclosed please find certificate of A. Angus, agt., covering the 8 bdls, ties a/c "Wm Stevens, Butler," shipped by you, (as per enclosed receipt,) Decr. 2d, and concerning which you wrote us under dates May 18 & 25.

Mr. Angus goes to Bremond to-day to look up some old tie matters, & when he returns has promised to settle up all the old claims in which you are interested.

Mr. Campbell, (of Gaston & Co.,) says they received the 10 bdls. ties a/c Shumatte & Ezell, but cannot show that they were forwarded—think he will make settlement by sending some ties which are now due him by R. W. Co..

Cotton receipts light at this point as yet.

Yours, truly,

J. H. LITTLEFIELD & CO.

GROESBECK, TEXAS, *July* 1, 1871.

Messrs. ALFORD & VEAL, *Galveston:*

451 D. SIRS: We value on you this day for Tex. Bkg & Ins. Co., $30.32 gold, being bal. our favor as per enclosed statement. You will notice a credit of $56.84 for two rolls bagging (Wm. Stevens, Butler) sold for your a/c. The 8 bales ties, same shipment, we have not yet been able to recover; hope to do so during present month as we have many leasure hours in prospect.

J. H. LITTLEFIELD & CO.

G., H. & H. R. R. to Geo. F. Alford & Veal.

For 15 bdls. arrow-ties lost in transit, consigned to J. J. Lewis, & Co. Bremond, Oct. 11, 1870.

	Gold.
15 bdls. arrow-ties, 840 lbs., @ 5c	$42 00

GALVESTON, 11 *October*, 1870.

Received in good order from Geo. F. Alford & Veal, by the G., H. & H. Railroad, to be delivered in like good order at Bremond to J. J. Lewis & Co., he or they paying freight.

Marks.	Articles.
C. D. Pickett, Waxa.	13 bdls. arrow-ties.
Godfrey & Spinks, Bremond.	7 do. do.
S. R. Hilburn, Waxa.	15 do. do.

B. W. LECOMPTE.
HUSTED.

452 (Foregoing papers endorsed:) Ch. 86. Filed May 26, '74. C. Dart, clk.

Following papers not marked filed.

[Galveston, Houston & Henderson R. R. Co. N. A. Cowdrey, receiver.]

SUP'TS OFFICE,
Galveston, Aug. 25, 1871.

Alford & Veal has two rolls Bengal bagging, 100 & 101 yards, in our shed, to be shipt when ordered.

EM. PATRICK, *Agt.*

G., H. & H. R. Road to Geo. F. Alford & Veal.

For 2 rs. bagging lost in trans't. Ship'd 19 Dec., 1870. Marked J. Burkhalters, 201 yds., @ 24 ..... $48.24

This bagging was ascertained to be missing & 6c. per yard paid in in Sept. ($12.00,) the bagging being reported at the Galveston depot as appears by report of Mr. Patrick, agt. One piece of this B. has since been delivered to other parties, & the one now at depot is damaged. We decline to receive it.

Oct. 27, '71.

GEO. F. ALFORD & VEAL.
By T. W. MONIER.

453 *Notice of rec'pt of master's report.—From rule & order book, May 26, 1874.*

N. A. COWDREY & OTHERS
v.
GALVESTON, HOUSTON & HENDERSON RAILroad Company & others. } Ch. 1. Docket number 86.

Petition of Alford & Veal v. N. A. Cowdrey, receiver.

This day came Edward T. Austin, special master in this cause, to whom it was referred to examine into the claims of Alford & Veal against the receiver herein, and files herein his report upon the said claim.

Galveston, May 26, 1874.

Attest:

C. DART,
Clerk U. S. Circt. Court, E. D. T., G.

454 *Petition of R. M. Collins & Co.—Filed March 12, 1873.*

In the circ't court of the United States for eastern dist. of Texas, at Galveston.

To the honorable the said court:

R. M. Collins and Waggoner, heretofore, to wit, in 1870 and 1871, merchants and partners, in Denton, Denton County, Texas, under the firm-name of R. M. Collins & Co., and now residing at Decatur, in Wise County, Texas, show to the court: That, on 12 December, 1870, they bought in St. Louis, Missouri, a certin bill of goods from J. T. Uttleback & Co., the same being hereto attached, marked A; that said goods were forwarded to them thro' their agents in Galveston, J. C. & S. R. Smith & Co., by whom they were delivered for transportation to said R. M. Collins & Co., to the proper and authorized agent of the Galveston, Houston and Henderson Railroad Company, on 5th January, 1871, taking the receipt of said road therefor, which is hereto attached, marked "B;" that by said receipt and bill of lading the said railroad company undertook and agreed to deliver said goods at Kosse,
455 on the line of the Texas Central Railroad, to petitioners' agents, J. J. Lewis & Co.; that one case of goods, consisting of boots, for which petitioners paid to Utterback & Co. the sum of fifty-six dollars, was not delivered to said Lewis & Co., at Kosse, by said company for petitioners, as contracted by said company, and because of the negligence and default of the company to deliver said case as contracted,

petitioners have never received the same; whereby they have been damaged in the sum of sixty-six dollars, the value of said goods, with interest from said time of default. And petitioners pray that this their claim be referred to a master of said court for adjudication and allowance, and, upon the confirmation of his report, the court will require the receiver of said company to pay to petitioners the amount of said decree, N. A. Cowdrey being said receiver at the time of said default.

R. M. COLLINS,
One of firm of R. M. Collins & Co.

Sworn & subscribed to before me this day, the 4th day of March, A. D. 1873.

To certify which I hereto subscribe my name and affix the impress of my official seal, the day and year above written, at the city of Galveston.

456 [SEAL.] WM. R. JOHNSON,
Notary Public for Galveston County.

McLEMORE & HUME,
Counsel for Petrs.

ST. LOUIS, *December 12th*, 1870.

Messrs R. M. Collins & Co., Denton, Texas, bought of J. T. Utterback & Co., wholesale dealers in boots and shoes. (Terms cash.) No. 309 North Maine street:

✱1. 1 doz. men's clf. clf. back D. S. boots, $\frac{1}{10}$			56 00
✱2. 5 " wom's P. sole kip polkas, $\frac{3}{7}$ @ $21.00	105 00		
1 " child's fancy-heeled bals., $\frac{3}{6}$	13 50		
		118 50	
2 cases, 50; drayage, 50; wood strapg., 30c.; slps., 10			1 40
			175 90
Marine ins., on $195.00, @ $1\frac{4}{10}$ %			2 73
			178 63
Less stamps			10
			$178 53

457 (Duplicate.)

Dray No. .] GALVESTON, *Jan'y* 5, 1871.

Received in good order from J. C. & S. R. Smith & Co., on board the G., H. & H. Railway, whereof is master, and to be delivered in like good order at Kosse, (usual dangers excepted,) unto J. J. Lewis & Co., he or they paying freight:

Marks.	From.
R. M. Collins,	3 boxes tobacco.
Denton.	1 case saddlery.
Care J. J. Lewis & Co.,	1 bx. hats.
Kosse.	1 stove.
	2 c/ B. & S.
Certified copy.	W. V. MORRIS.
B	
See way-bill.	131 B. C. 140.

(Endorsed:) Ch. No. 1, ch. 85. U. S. circuit court. R. M. Collins & Co. v. G., H. & H. R. Road Co. Petition for allowance for lost freight. Filed March 12, 1873. C. Dart, clerk.

458 *Order to refer to master.—From minutes, Dec'r term, 1873, Feb'y 20th, 1874.*

R. M. COLLINS & Co.
v.
N. A. COWDREY, RECEIVER, & F. P. JAMES. } Ch. 85.

Petition in chancery cause No. 1, N. A. Cowdrey & others v. Galveston, Houston & Henderson Railroad Co. and others.

This day came the petitioners herein, by their attorneys, and presenting their petition against the receiver, N. A Cowdrey, for allowance for freight lost while the road was in the hands of said receiver, moved the court to order, in accordance with the practice of said court, that said petition be referred to a master, to examine and report what amount, if anything, is properly due and payable thereon: Wherefore, in consideration of the premises, it is ordered, that said petition be referred to Edward T. Austin, who is hereby appointed special master in chancery for the purpose, to examine and report to the court what amount, if anything, is properly due and payable to the petitioner upon his said claim for lost freight, as therein set forth.

459 *Master's report.—Filed May 26, 1874.*

In dist. court U. S., eastern dist. of Texas.

N. A. COWDREY ET AL.
vs.
G., H. & H. R. R. CO. ET AL.

Claim R. M. Collins against N. A. Cowdrey, for lost freight, referred to Special Master Austin to report what, if anything, is due complainant from the receiver.

The master finds from the bill lading that one case boots & shoes, receipted for by G., H. & H. R. R., on 5 Jan'y, 1871, consigned to J. J. Lewis & Co., Kosse, shipped by J. C. & S. R. Smith & Co., marked R. M. Collins, Denton, care J. J. Lewis & Co., Kosse.

From the oath of the claimant the master finds that the said case was not delivered, but was lost, and that the value of the goods was one hundred and seventy-eight dollars & 53 cents.

The master, therefore, finds that there is due from N. A. Cowdrey, as receiver, the said sum of 178.53, with 8% from 10 Jan'y, 1871, being—

Principal	178 53
Int., 3 yrs. 4 mos	46 40
Total due	$224 93

EDWARD T. AUSTIN,
Special Master.

460 (Indorsed:) Chancery No. 1. R. M. Collins vs. Receiver. Report master, E. T. Austin. Filed May 26th, 1874. C. Dart, cl'k. Master's fee, claim for service, 10.00. E. T. Austin.

Note of rec'pt of master's rep't.—From rule & order book, May 26th, 1874.

N. A. COWDREY & OTHERS
v.
GALVESTON, HOUSTON & HENDERSON RAILroad Company & others. } Ch. 1. Docket number 85.

Petition of R. M. Collins v. N. A. Cowdrey, receiver.

This day came Edward T. Austin, special master in this cause, to whom it was referred to examine into the claim of R. M. Collins against the receiver herein, and files herein his report upon the said claim.

Galveston, May 26, 1874.

Attest:

C. DART,
Clerk U. S. Circ't Court E. D. T., G.

461 (Endorsement:) N. A. Cowdrey et al. vs. The Galveston, Houston & Henderson Railroad Co. et al. Ex parte John C. Bullett. Petition & intervention. Filed March 30th, 1868. Levi Jones, clerk.

Petition of John C. Bullett.

Circuit court of the United States, eastern district of Texas.

N. A. COWDREY AND OTHERS
vs.
THE GALVESTON, HOUSTON & HENDERSON Railroad Company and others. } In chancery.

To the judges of the circuit court of the United States for the eastern district of Texas.

The petition of John C. Bullett, of the city of Philadelphia, and State of Pennsylvania, respectful'y represents:

462 Your petitioner shows unto your honors that N. A. Cowdrey, Edwin and George Parsons, Frederick P. James, and Isaac Sherman, citizens of the city and State of New York, have exhibited their bill of complaint against the Galveston, Houston and Henderson Railroad Company and others in this honorable court, and that the defendants therein have been duly served with process, appeared thereto and have put in their answers, and that said cause is now depending and at issue.

And your petitioner further shows that, by the said bill of complaint, the said complainants therein seek (inter alia) to foreclose and enforce a certain mortgage and deed of trust executed December 1st, 1853, and delivered December 14th, 1853, by the said The Galveston, Houston and Henderson Railroad Company to William Kent, Ambrose Moore, and John Masterman, as trustees, (a copy of which mortgage or deed of trust is annexed to said bill of complaint as Schedule A,) and also to fore-
463 close and enforce a certain other mortgage or deed of *or deed of* trust executed on the 1st day of June, A. D. 1855, by the said The Galveston, Houston and Henderson Railroad Company to William Kent and Charles B. Haddock, as trustees, (a copy of which mortgage or deed of trust is annexed to said bill of complaint as Schedule B;) and also to foreclose and enforce a certain other mortgage or deed of trust executed

on the 8th day of October, 1857, by the said The Galveston, Houston and Henderson Railroad Company to William Kent and Charles B. Haddock, as trustees, (a copy of which mortgage or deed of trust is annexed to said bill of complaint as Schedule C.)

And your petitioner craves to refer to said schedules or exhibits, and to the pleadings in this cause, as part of this petition.

And your petitioner further shows that the said William Kent accepted the trust under the mortgage first above mentioned, (annexed to said bill as Schedule A,) and also the trust under the second-mentioned mortgage, (annexed to said bill as Exhibit or Schedule B;)
464 but that he never accepted the trust under the third mortgage or deed of trust of 8th October, 1857, (Schedule C,) nor acted thereunder, and disclaimed the said trust when the same was first brought to his knowledge, which was not until the 23rd day of April, 1860.

And your petitioner further shows that, upon the 24th day of April, 1860, a notice was served upon the said William Kent by Albion W. Hand, claiming to be the holder of one bond issued under the mortgage of December 1st, 1853, (Schedule A,) and numbered 34, declaring that the interest-warrant annexed to the said bond, and due December 1st, 1859, had not been paid, and that under and in pursuance of the terms and provisions of the said mortgage, and by reason of the default so made by the said company, that the trustees named therein were required to take possession of the mortgaged property and sell the same.

And your petitioner would further show that, in the month of March, 1860, a notice was served upon the said William Kent by Robert Coleman, the holder of one hundred and sixteen bonds issued under
465 the mortgage of June 1st, 1855, alleging that the interest-warrants on said bonds had been duly presented and were not paid, and had remained unpaid for more than sixty days after their maturity, and requiring the said William Kent and his cotrustee to take possession of said mortgaged property and to make sale thereof and *and* apply the proceeds so realized to the payment and satisfaction of the said bonds held by him.

And your petitioner further shows that the said William Kent thereupon retained counsel learned in the law, and, in pursuance of the advice given by such counsel, went to the city of Galveston, and, on the 25th day of April, 1860, demanded possession in his own name and in the name of his cotrustees according to the terms and conditions of said mortgages A & B of the said railroad, franchises, and property, but that the said company, or the parties then holding the said property, refused to deliver such possession.

And your petitioner further shows that the said William Kent
466 thereupon caused to be filed a bill of complaint in behalf of himself and the said Charles B. Haddock, as trustees, as aforesaid, against the said company and the parties then in possession, (a copy of which is hereto annexed, marked Exhibit D,) which your petitioner prays may be deemed and taken as part of this petition, and had process duly issued thereon.

And your petitioner further shews that the defendant therein appeared and demurred to said bill, which demurrer was pending and undisposed of when, by the breaking out of the late civil war, communication was interrupted between New York State (the residence of the said William Kent) and the State of Texas.

And your petitioner further shows that the said William Kent departed this life on the 4th day of January, 1861, and that his cotrustee, Charles B. Haddock, died on the 15th day of January, 1861.

And your petitioner further shows that he has been a member of the P'iladelphia bar, practising the profession of the law in the
467 courts of the State of Pennsylvania, and the Federal or United States court held in that State, since the year 1850.

That, in the month of April, 1860, your petitioner was employed by the said William Kent to go down to Texas, as the attorney and counsel of said William Kent and Charles B. Haddock, trustees, as aforesaid, for the purpose of aiding, assisting, and counselling them in the proceedings which they proposed to institute upon the said mortgages or deeds of trust.

That the said William Kent agreed to pay your petitioner the sum of $5,000, as a fee for going with him and aiding and assisting him in the performance of his duties as a trustee, aforesaid.

That your petitioner went with the said William Kent to Galveston, Texas, leaving the city of Philadelphia on the 5th day of April, 1860, and returning on the 5th day of May, 1860, and while in Galveston your petitioner aided and assisted the said William Kent, and the
468 counsel employed by him in Galveston, in preparing the bill and other papers which were then deemed requisite and necessary in the performance of the duties of the said Kent and Haddock, trustees as aforesaid.

Your petitioner would further show that after his return to Philadelphia, he continued his attention to the said business by corresponding with the said William Kent and Charles B. Haddock, during their lives, and with the counsel in Galveston, until the breaking out of the war prevented all further communication.

Your petitioner would further show that, after the cessation of hostilities, and in the fall of the year 1865, with the concurrence and at the instance of Kent, executrix of William Kent, deceased, your petitioner employed Mr. Samuel Dickson, also a practising lawyer in the city of Philadelphia, to visit Galveston, for the purpose of ascertaining the condition of the road and also of the suit, and to determine what steps were necessary and could be taken for the protection of the
469 interests of the parties secured by the said mortgages; but this court was not then open for business, and upon the return of Mr. Dickson the facts were communicated to the said Kent, executrix, as aforesaid, and to such other persons as were known by your petitioner to be bondholders, secured by the said mortgages.

While your petitioner was thus conferring with the parties in interest the above entitled suit was instituted.

Your petitioner would show that, in the discharge of his duties under the retainer of the said William Kent, trustee as aforesaid, he devoted much time and labor to the business in which he was employed, and expended large amounts of money in traveling to Galveston and back again, and in paying the expenses of the said Samuel Dickson in the visit he made to Texas. All the acts of the said William Kent in the premises were ratified and approved by the said Charles B. Haddock, his cotrustee.

Your petitioner is advised that his outlays and expenses and
470 his claim for compensation under the retainer of the said William Kent constitute a paramount claim upon the mortgaged property and should be allowed as part of the expenses of this suit.

Your petitiner therefore prays to be allowed to become a party to the above entitled suit, and that his expenses and outlays and his claim for

compensation be allowed and paid to your petitioner as part of the expenses and costs of this suit.

And your petitioner will ever pray, &c.

JOHN C. BULLETT.

F. H. MERRIMAN,
Solicitor for Plaintiff.

STATE OF PENNSYLVANIA,
City & County of P'ilada., ss :

John C. Bullett, the petitioner above named, being duly sworn according to law, deposes & says that the facts set forth in the above petition, so far as they are stated of his own knowledge, are true; and, so far as they are stated upon the information of others, he believes them to be true.

JOHN C. BULLETT

471 Sworn to and subscribed before me this seventh day of March, A. D. 1868. Witness my hand and official seal.

[SEAL.] SAM'L B. HUEY,
A Commissioner for Texas in Pennsylvania.

Sworn to and subscribed by the said John C. Bullett before me, the subscriber, a United States commissioner in and for the eastern district of Pen'sylvania, this tenth day of March, 1868; as witness my hand and official seal, at Philadelphia, in the district aforosaid.

[SEAL.] CHARLES SARGEANT,
U. S. Commissioner in and for the Eastern District of Pen'sylvania.

472 EXHIBIT D.

In the district & circuit court of the United States for the eastern district of Texas, sitting at Galveston, in said district. In equity.

To the Hon. John C. Watrous, judge of said court:

William Kent, a citizen of the State of New York, and Charles B. Haddock, a citizen of the State of New Hampshire, bring this their bill against the Galveston, Houston and Henderson Railroad Company, a corporation chartered by the legislature of the State of Texas, having its principal office for business at Galveston, in the district aforesaid, and Alfred F. James, Jacob L. Briggs, J. C. Kuhn, Julius Kauffman, Lent M. Hitchcock, John Sealy, Joseph J. Hendly, Ebenezer B. Nichols, James Sorley, Thompson H. McMahon, Robert Mills, and William J. Jones, who are all citizens of the State of Texas, directors and officers of said company, said Charles B. Haddock, a citizen of the State of New Hampshire, as trustee as hereinafter stated, and Philip C.
473 Tucker, junior, a citizen of the said State of Texas.

And thereupon your orators complain and say, by an act of the legislature of the State of Texas, approved the 7th day of February, 1853, entitled "An act to incorporate the Galveston, Houston and Henderson Railroad Company," the said Galveston, Houston and said Henderson Railroad Company were incorporated with the rights, powers, privileges, and for the purposes ther'in set forth and expressed; all of which will appear by a reference to the said act of the legislature of Texas.

That, in pursuance of the powers and provisions of said act, the said company was duly organized and created a body corporate, and proceeded to construct their said railroad from Galveston to Houston.

That, on the 10th day of January, 1854, a certain other act was passed by the legislature of the State of Texas, entitled "An act supplementary to an act to establish the Galveston, Houston and Henderson Railroad Company;" that afterwards the legislature of the State
474 of Texas did also pass an act entitled "An act to amend an act supplementary to an act to establish the Galveston, Houston and Henderson Railroad Company, approved January 10th, 1854, which was duly approved on the 23rd day of January, A. D. 1854.

That the legislature of the State of Texas did also pass an act entitled "An act supplementary to and amendatory of an act to amend an act to establish the Galveston, Houston and Henderson Railroad Company," approved January 10th, 1854, which was duly approved July 24th, 1856.

That the legislature of the State of Texas did also pass an act entitled "An act for the relief of the Galveston, Houston and Henderson Railroad Company, "and in amendment of the act of incorporation thereof, and of acts amending the same, and in addition thereto," which was approved on the 20th day of November, A. D. 1857.

That the said company complied with the terms and conditions
475 of the several acts of the legislature, and thereby became entitled to the provisions and benefits thereof.

That, upon the 14th day of December, 1853, the said company made, executed, and delivered to the above-named William Kent, and to John Masterman, jr., and Ambrose Moore, as trustees, an instrument of writing in the nature of a mortgage or deed of trust, dated December 1st, 1853, conveying all the railroad of the said company constructed and to be constructed from Galveston to Houston, together with all and singular the railways, rails, bridges, fences, privileges, rights and real estate then owned, or which should thereafter be owned by said company, or which should thereafter be owned by them in connection with said road from Galveston to Houston, and the tolls, monies, incomes, and profits, whenever said company should be in default in paying the interest on the money to be borrowed under the said mortgage, and all the franchises of the said company, and all the lands used and occupied or *or* which might thereafter be used or occupied for the railway, depots, or
476 stations on said road from Galveston to Houston, and all buildings erected or which might be erected thereon, upon the trusts and for the uses and purposes, and upon the terms and conditions therein set forth; all which will fully appear by reference to the said mortgage, a true copy of which is hereto annexed marked "Exhibit B," and prayed to be taken as a part of this bill. That the said mortgage was duly recorded in the proper office of record, in the county of Galveston, State of Texas, upon the 2nd day of January, 1854, and in the county of Harris, in said State of Texas, on the day of , 1854. That the said mortgage was given to secure the payment of fifteen hundred bonds for £100 sterling, each, dated December 1st, 1853, and payable December 1st, 1873, with interest at the rate of six per centum per annum, payable semi-annually, upon the surrender of the dividend warrants annexed to the said bonds. That the consideration for the said mortgage was the better to secure to the persons who should hold the said bonds, the payment of the principal money and interest therein specified according to the tenor and effect of the said bonds and the dividend war-
477 rants thereto annexed. That it was also provided by the said mortgage that in case the said company should at any time for the space of three months be in default in respect to the payment either of principal or interest of said bonds when due and demanded, and upon

request in writing of any one of the holders of said bonds on which interest or principal was not duly paid as aforesaid, said trustees might and should take actual possession of said railroad and of all and singular the property and premises thereby mortgaged, and through the agency of persons they might from time to time appoint, should collect and receive the tolls, incomes, and profits of the said railroad from Galveston to Houston, and mortgaged property, for the purpose of the security therein before described, and might sell and dispose by public auction, giving reasonable public notice of time and place of such sale of the said road from Galveston to Houston, and other property thereby mortgaged, conveyed or assigned, or so intended to be, and all benefit
478 and equity of redemption of the said *of the said* company therein, always with the benefit of the franchise, and subject to the conditions thereof, and to make deeds of conveyance therefor.

Your orators are not informed, and therefore cannot state, how many of the fifteen hundred bonds were issued or negotiated by the said company, and they are not informed, and hence cannot state, what amount of said bonds are now outstanding; but your orators have been informed and believe, and therefore state, that there are a portion of said bonds, of the amount of $200,000, still outstanding, in the hands of persons who claim to be and are entitled to the amount thereof, with interest thereon.

Your orators would further state that upon the 24th day of April, A. D. 1860, a notice was served upon complainant, William Kent, by Albion W. Hans, claiming to be the holder of one bond issued under said mortgage, and numbered 34, declaring that the interest-warrant annexed to the said bond, and due December 1st, 1859, has not been paid, and that under and in pursuance of the terms and provisions of the
479 said mortgage, and by reason of the default so made by the said company, *that* the trustees named therein were required to take possession of the mortgaged property, and to sell the same; all which will appear by a true copy of said notice, which is hereto annexed, marked "Exhibit C," and prayed to be taken as a part of this bill.

Your orators would further show that by an indenture of mortgage, dated the 1st day of June, 1855, the said company did grant and convey to your orators, and the survivors of them, and the successors in the trust thereby created, the said railroad constructed and to be constructed from Galveston to Houston aforesaid, together with all and singular the railways, bridges, fences, privileges, rights, and real estate then owned by the said company, or which should thereafter be owned by them in connection with the said road from Galveston to Houston, and all the lands which should or might belong to said company by virtue of any act of the legislature of the State of Texas, in connection with the said road from Galveston to Houston, the tolls, incomes,
480 issues, and profits, whenever said party of the first part, to wit, said Galveston, Houston and Henderson Railroad Company, should be in default of making payment, to be *be* had from the same, and all the franchise of said company used and had and occupied, or which might thereafter be used or occupied, for railways, depots, or stations on said road from Galveston to Houston, and all buildings then erected, or which might thereafter be erected thereon, to have and to hold the said premises thereinbefore granted to your orators, and the survivors of them and their successors in trust for the person or persons, bodies politic or corporate, who should become holders of the said bonds or any of them, then about to be issued, or thereafter issued by the said company as aforesaid, subject to the terms and stipulations of the said bonds, and subject also to the possession, control, and manage-

ment of the directors of said company, so long as the said company should well and faithfully perform all and singular the stipulations of the bonds aforesaid and the covenants of this said indenture; and
481 it was also further provided by the said indenture that in case said company should at any time, for the space of sixty days, be in default in respect to the payment either of principal or interest of said bonds, when due and demanded, and upon request in writing of any one of the holders of said bonds, on which interest or principal should not be duly paid as afore'd, your orators might and should take actual possession of the said railroad, and of all and singular the property and premises therein conveyed, and through the agency of the persons your orators might from time to time appoint, should collect and receive the tolls, incomes, and profits of the said railroad from Galveston to Houston, and other property thereby mortgaged, conveyed, or assigned, or intended, and all benefit and equity of redemption of the said company therein, always with the benefit of the purchase, and subject to the conditions thereof; and as the attorney or attorneys of the said company for that purpose therein and thereby duly constituted your orators and the survivor, and their successors, should have full power and authority to make and deliver to the purchaser or purchasers thereof good
482 and sufficient deed or deeds of conveyance for the real estate in fee-simple or otherwise, according to the title or interest of the said company therein, and good and proper conveyances and assignments of the other property thereby conveyed, granted, and assigned, and out of the monies arising, either from the incomes or profits of the said road from Galveston to Houston, or the sale thereof, after deducting the expenses incurred in carrying on the business of the road, the costs, charges, and expenses, and counsel fees incurred in these proceedings, and a reasonable compensation to themselves for their services therein, should apply so much of the residue as may be necessary to pay the principal and interest which might be due on said bonds to be issued under said indenture of mortgage, rendering the balance of such monies, if any should remain, to the said company, and that the sale so made should be a perpetual bar against said the company and all other persons claiming by, from, or under them.

Your orators would further show that the said indenture of mortgage was made to secure the sum of seven hundred and fifty thou-
483 sand dollars which the said company proposed to borrow, and for which said company proposed to issue the bonds of said company, payable in the city of New York on the 1st day of July, 1865, bearing interest at the rate of ten per cent. per annum, such interest to be payable semi-annually on presentation and delivery of the interest-warrants annexed to said bonds, which bonds were to be of the amount and tenor respectively of one hundred, for one thousand dollars each; five hundred, for five hundred each; seven hundred and fifty, for two hundred dollars each; and two thousand five hundred, for one hundred dollars each, all of said bonds being dated January 1st, 1855, payable to bearer, and being numbered from (1) to (3,350,) both inclusive, all which will appear by reference to said indenture of mortgage, a true copy of which is hereto annexed, marked Exhibit D, and prayed to be taken as part of this bill.

Your orators would further show that said mortgage was duly recorded in the proper office of record in the county of Galveston, State of Texas, on the 6th day of November, 1855, and in Harris
484 County, State of Texas, on the day of 1855.

Your orators are not informed as to what amount of money was

borrowed by said company under said mortgage, nor what number of said bonds were negotiated by said company, nor what amount is due on those now outstanding in the hands of persons claiming to hold them for value; but they are informed and believe, & therefore state, that a large amount and number was so negotiated, and large amounts of money advanced thereon, and on the faith thereof; and that the whole of the said bonds are now outstanding in the hands of persons who claim to be the holders thereof for due and valuable consideration.

Your orator would further show that in the month of March, 1860, a notice was served upon your orators by Robert Coleman, the holder of one hundred and sixteen bonds issued under said last-named mortgage, alleging that he was the holder of certain bonds therein mentioned, and that he was also the holder of certain warrants for interest thereon, also mentioned therein; that the said interest-warrants
485 had been duly presented and were not paid, and had been unpaid for more than sixty days after their maturity, and requiring your orators to take possession of said mortgaged property, and to make sale thereof, and apply the proceeds so realized to the payment and satisfaction of the said bonds held by him.

Your orators would further show that the said company did execute an indenture, dated the 8th day of October, 1857, purporting to grant and convey to your orators the said railroad constructed and to be constructed to the full distance of seventy-five miles, together with all and singular the railways, rails, bridges, fences, privileges, rights, and real estate then owned by the said company, or which should be thereafter ow*e*n*d* by them in connection with said road from Galveston for the full distance of seventy-five miles, and all the lands which should or might belong to said company, by any act of the legislature of the State of Texas, in connection with said road from Galveston to the termination of said seventy-five miles, the tolls, revenues, issues, and profits, (when-
486 ever the said company should be in default of making payment,) to be had from the said road, and other property, rights, and privileges of the said company as therein set forth, to secure the payment of the sum of $2,625,000, to be thereafter borrowed by the said company, in the manner and upon the terms therein set forth; all which will appear by reference to said indenture of mortgage, a true copy of which *are* hereto annexed, marked Exhibit E; that the said mortgage was recorded in the proper office of record in Galveston County on the 23rd day of June, 1859.

Your orator, the said William Kent, would further show, and avers, that he never did accept the said trust, under the said last-mentioned indenture of mortgage, nor act thereunder, nor in any manner recognise the same; and he now explicitly disclaims the said trust, and declines to act thereunder, and declares that he was never consulted in reference to the said trust, and had no knowledge that his name had been used therein until the 23rd day of April, 1860, when for the first time he was first informed that his name had been used therein as a trustee.

487 Your orators would further show that said Haddock did accept said trust, and is now an acting trustee thereunder.

Your orators further show that by indenture of mortgage dated July 28th, 1859, the said company did grant and convey their railroad, real estate, franchises, and other property of the said company to Philip C. Tucker, jr., in trust to secure the sum ($95,280.24) ninety-five thousand two hundred and eighty dollars and twenty-four cents, with interest at the rate of eight per cent. per annum from the 21st day of May, 1859, to

Robert Pulsford, as will appear by the said mortgage, a true copy of which is hereto annexed, marked Exhibit F.

Your orators are not informed what amount is due to said Robert Pulsford under said mortgage, and have no knowledge in reference to said mortgage, except that it is of record in the proper office in Galveston County.

Your orators are informed and believe, and therefore state, that on the 6th day of March, A. D. 1860, a sale was made by the sheriff of Gal-
488 veston County, State of Texas, of all the rights, title, and interest of the said company of, in, and to the said railroad, real estate, property, rights, privileges, and franchises of said company, under various writs of execution issued out of the district court of Galveston County, in the State of Texas, upon judgment recovered against said company, subsequent in point of time to the execution and record of the said mortgages in favor of your orators, and also subsequent to the issue and negotiation of the bonds issued and negotiated thereunder; that the purchasers of the said railroad, real estate, property, rights, privileges, and franchises proceeded with their associates to organize under and in accordance with the acts of the legislature of the State of Texas in such cases made and provided, and that James, Briggs, Kuhn, Kaufman, Hitchcock, Sealey, Hendley, Nichols, Sorley, McMahon, Mills, and Jones, now claim to be the officers and directors of said company, and are now in possession and occupancy of said railroad, and are using and enjoying the rents, issues, and profits thereof.

489 That upon the 25th day of April, A. D. 1860, your orators demanded possession of the said railroad, franchises, and property, and that the said company, through Alfred F. James, their president, refused to deliver such possession.

Your orators would further show that said company have no money wherewith to pay the interest or principal due upon the mortgages in which your orators are trustees, as hereinbefore stated.

Your orators are informed and believe, and therefore state, that said John Masterman, jr., and Ambrose Moore are residents and citizens of the kingdom of Great Britain, and are aliens, and now absent from the State of Texas, and without the jurisdiction of this honorable court, and hence your orators are unable to make them parties defendants to this bill; but you orators pray that they may be made parties hereto whenever they come within the jurisdiction of this honorable court.

490 Your orators therefore aver and charge that the said company was duly incorporated by an act of the legislature of the State of Texas, as hereinbefore stated, and was duly organized and proceeded to construct their said railroad from Galveston to Houston, and complied with the terms and conditions of said several acts of the legislature of the State of Texas hereinbefore stated, and thereby became entitled to all the benefits and provisions of said acts of the legislature. Your orators also aver and charge that said company made, executed, and delivered to the above-named William Kent and John Masterman, jr., and Ambrose Moore an indenture of mortgage, dated December 14th, 1853, in the manner and for the purposes and upon the trusts hereinbefore stated; that the same was duly recorded, as hereinbefore stated, and is the first lien upon the said railroad and real estate, property, and franchises of the company; that there are still due to and outstanding in the hands of various persons bonds issued under said mortgage, to the amount of not less than ($200,000) two hundred thousand dollars;

491 that the said Albion W. Hand is the holder of one of the bonds issued under said mortgage, being number 34, and that the inter-

est-warrant annexed thereto, and due December 1st, 1859, was not paid, and that by reason of the notice served upon the said William Kent, as hereinbefore stated, and the default so made by the said company, and by the terms and provisions of the said mortgage, it became the duty of said trustees, under said mortgage, to enforce the trusts contained in said mortgage, and to subject the property mortgaged to the satisfaction of the debts secured thereby.

Your orators also aver and charge that the said company did also execute and deliver to your orators an indenture of mortgage, dated June 1st, 1855, as hereinbefore stated, at the time, in the manner, and for the purposes hereinbefore set out; that the whole of the bonds proposed to be issued under the said mortgage were issued and are now outstanding in the hands of persons who claim to be the holders thereof for due and valuable consideration; that the said Robert Coleman is the holder of
492 one hundred and sixteen bonds issued under said last-mentioned mortgage, and that the interest-warrants annexed thereto, and due January 1st, 1859, and July 1st, 1859, were not paid, and that by reason of the said notice served upon your orators by the said Robert Coleman, as hereinbefore stated, and the default made as therein alleged, and by the terms and provisions of said last-mentioned mortgage, it has become the duty of your orators to enforce the trusts confided to them by the terms of said mortgage and to subject the property mortgaged to the satisfaction of the debts intended to be secured thereby.

Your orators also aver and charge that said company did also execute an indenture of mortgage, dated the 8th day of October, 1857, purporting to grant and convey to your orators the property therein mentioned, upon the terms and conditions and for the purposes hereinbefore stated and set forth; that your orator, William Kent, never did accept the trust under said mortgage, and is not a trustee thereunder; that said Haddock is a trustee under said mortgage.

493 Your orators also aver and charge that the said company did execute and deliver to said Philip C. Tucker, jr., in trust, an indenture of mortgage, dated July 28th, 1859, as hereinbefore stated, in the manner and for the purpose therein set forth, and that the said mortgage was recorded in the proper office of record in Galveston County, State of Texas.

Your orators also aver and charge that a sale was made on the 6th day of March, 1860, by the sheriff of Galveston County, State of Texas, of all the right, title, and interest of the said company in and to the said railroad, real estate, property, rights, privileges, and franchises of said company, to the persons and in the manner and under the writs of execution as hereinbefore stated, and that the purchasers thereof proceeded, with their associates, to organize, under and in accordance with the acts of the legislature of the State of Texas in such cases made and provided, and that said defendants, James, Briggs, Kuhn, Kauffman, Hitchcock, Sealey, Hendley, Nichols, Sorley, McMahon, Mills, and
494 Jones, now claim to be the officers and directors of said company, and are now in possession and occupancy of said railroad, and are using and enjoying the rents, issues, and profits thereof.

Your orators also aver and charge that they did demand possession of said mortgaged property, and that delivery of possession of the same has been refused, as hereinbefore stated.

Your orators further aver and charge that said company have no money wherewith to pay the interest or principal due upon the mortgages in which your orators are trustees.

Your orators also aver and charge that said John Masterman, jr., and

Ambrose Moore are residents and citizens of Great Britain, and are aliens, and now absent from the State of Texas, and without the jurisdiction of this honorable court, and hence cannot be made parties to this bill.

Your orators also aver and charge that they have no means of ascertaining or determining what amount of money is certainly due upon the said mortgages in which your orators are trustees, and that the
495 same cannot be determined or ascertained without an account being taken under the direction of this honorable court; but your orators do aver and charge that the amounts due upon the said bonds issued under the two first-mentioned mortgages are not less than nine hundred thousand dollars, and the property granted and conveyed by said mortgages is an inadequate security for the amounts due thereon. To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and that the said corporation defendants may under their common or corporate seal, and all the other defendants may upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to the several allegations of this bill, and as though they had been specially interrogated thereto.

And that your orators may be put into possession of all the railroad franchises and property conveyed by the two indentures of mortgage first hereinbefore mentioned, and may be directed by this
496 honorable court in the management of the same and in the execution of their trusts, and that the defendants may be restrained from intermeddling therewith, and that an account may be taken of what is due to bondholders, under two said first-mentioned mortgages, and that the said company may be ordered to pay the same by a fixed day, and default thereof that the company may be forever debarred and foreclosed, and all persons claiming by, from, and under them, from all equity of redemption of the mortgaged property; that the same may be sold under the direction of this court, and according to the practice thereof, and the proceeds of such sale be paid over and distributed to and among the persons entitled thereto under the said mortgages, according to their respective rights, and that until such sale may be had a receiver of the mortgaged franchises and property may be appointed to take and hold the same in aid of the said trust, and that your orators may have such other and further relief in the premises as they may be entitled to, and to your honor may seem meet, and may be agreeable to equity and good conscience.

497 May it please your honor to grant unto your orators the writ of subpœna of the United States of America, directed to the said defendants, thereby commanding them and every of them, at a certain day, and under a certain pain therein to be specified, personally to be and appear before your honor in this honorable court, then and there to answer the premises, and to stand to, perform, and abide such order and decree therein as to your honor shall seem meet; and your orators shall ever pray.

(Endorsement:) No. 1. Exhibit D. Filed March 30th, 1868. Levi Jones, clerk.

Deposition of D. W. Gillett.

In U. S. circuit court for the 5th circuit, eastern district of Texas.

N. A. COWDRAY & OTHERS
vs.
GALVESTON, HOUSTON AND HENDERSON RAILCompany and others. } No. 1.

498 In the matter of ex-parte bill of John C. Bullett, filed in above cause.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

DANIEL W. GILLETT, being duly sworn, deposes that he is an attorney and counsellor at law, duly admitted and practicing as such at No. 19 Nassau street, in the city, county, and State of New York; that in the years 1859, 1860, and until May, 1861, deponent was engaged in the practice of his profession at the city of Galveston, in the State of Texas, and was duly admitted to practice as such in the district and circuit courts for said eastern district of Texas; that in the year 1859 deponent was, as such attorney and counsellor, employed by John C. Bullett, of Philadelphia, Penn., to deponent known to be an attorney and counsellor at law, to proceed on behalf of certain parties holding bonds and coupons issued by the Galveston, Houston and Henderson Railroad Company, to collect the same, and that thereupon de-
499 ponent entered upon such employment, and corresponded with said John C. Bullett at Philadelphia, with certain bondholders residing in France and other foreign countries, and with several officials of the State of Texas, residing at Austin, in said State, and also with various other parties, and particularly with the officers of said railroad company; that such action was had in reference to the matters of the said railroad company that it became necessary that Judge William Kent, of the city of New York, or the Hon. Charles B. Haddock, of New Hampshire, who were the trustees under one or more of the mortgages executed by said railroad company, should be present in said city of Galveston to facilitate proceedings for foreclosure of said mortgages; and that thereupon, at request of deponent, the said John C. Bullett and the said Judge William Kent, one of said trustees, came to Galveston, and were, with Judge L. A. Thompson, of Galveston, and with deponent, engaged for many days in examin'g the mortgages executed by said company, the record of the same, the laws of the State
500 of Texas applicable thereto, and in devising, drafting, and engrossing a bill in chancery at the suit of said trustees against said railway company and others, of which a printed copy is hereto attached.

That afterwards, and after the said bill had been duly filed in said district or circuit court of the United States for the eastern district of Texas, the said trustees, William Kent and Charles B. Haddock, both departed this life in the month of January, 1861. And thereupon deponent prepared the proper application to the court for the appointment of a successor in said trust, which application was not made to the court appointed to be held on the first Monday in May, 1861, as, by reason of the civil war then about to commence, the said term of court was not held; and no proceedings were had for appointment of a successor to the knowledge of deponent.

This deponent knows the extent of the various services rendered by

said John C. Bullitt for the said trustees, and for and on account of the holders of the bonds of said company, as well as of the services
501 rendered by deponent for the said Bullitt in that behalf; and verily believes that a proper and reasonable charge for such services, and the expenditures made in connection therewith, could not be estimated at less than the sum of five thousand dollars.

DANIEL W. GILLETT.

Subscribed and sworn to before me June 3rd, 1868.

KENNETH G. WHITE,
United States Commissioner for the Southern District of New York.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States, for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of Kenneth G. White, whose name is subscribed to the annexed deposition, and that the signature to the same is in his proper handwriting. And I do further certify that he was at the time of signing the same a United States
502 commissioner, duly appointed by the circuit court of the United States of America for the southern district of New York, second circuit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court this 3rd day of June, in the year of our Lord one thousand eight hundred and sixty-eight, and of the Independence of these United States the ninety-second.

[SEAL.] KENNETH G. WHITE, *Clerk.*

(Endorsements:) Ch. No. 1. Ch. No. 71. N. A. Cowdray et als. vs. G., H. and H. R. R. Co. Deposition of G. W. Gillett. Intervention of Bullett. Filed July 7th, 1868. Levi Jones, clk.

503 *Deposition of Bullitt.—Filed July 19th.*

In the circuit court of the United States, fifth circuit, eastern district of Texas, sitting at Galveston.

N. A. COWDREY ET ALS.
vs.
THE GALVESTON, HOUSTON AND HENDERSON Railroad Co.

The deposition of John C. Bullitt, esquire, taken by W. Grier Hibler, United States commissioner, at the office of John C. Bullitt, No. 32 South Third street, in the city of Philadelphia.

JOHN C. BULLITT, being duly sworn, deposes and says: In the month of March, 1860, I was a practicing attorney at law in the city of Philadelphia, and State of Pennsylvania, and had been such for a period of ten years. I was employed by William Kent, one of the trustees of certain mortgages given by the Galveston, Houston and Hender-
504 son Railroad Company, to go with him as the counsel of the trustees to Galveston, Texas, for the purpose of doing whatever the duty of the trustees required of them in reference to these mortgages. It was at the time very inconvenient for me to leave home, and the amount involved was very large, and I stated to him that I could

not go for anything less than five thousand dollars, ($5,000.00.) He said that he thought that amount was none too large, and he agreed, on behalf of himself and his cotrustee, Charles B. Haddock, to pay me that amount as a retaining fee, and for the service which I might render in advising them in the future. On the fifth day of April, 1870, I left Philadelphia, with Judge Kent and went to Galveston, and there consulted with Mr. Mason, who was also retained by Judge Kent as one of his counsel. In connection with Mr. Mason, and upon conference with other counsel engaged in these matters, I prepared the manuscript of a bill in equity, which was filed in the district and circuit court of the United States for the eastern district of Texas, sitting at Gal-
505 veston, for the purpose of foreclosing the mortgage in which the said Kent and Haddock were trustees. This bill was quite long, and as proceedings such as these were unusual in Texas, none of the resident counsel were familiar with the mode of proceeding. After the preparation and filing of the bill to which I have reference, I returned home, having been absent in all one month. I got back on the 5th of May. I corresponded with Judge Thompson, Mr. Gillett, and Mr. Mason, who were all residing in Galveston, in reference to the case, until the breaking out of the war, or the rebellion, prevented the transmission of letters in the spring of 1861. In the month of December, 1860, I think it was, Judge Kent died, and within 2 weeks after Mr. Haddock, his cotrustee, also died. However, Judge Kent had informed Mr. Haddock of his proceedings, and what was done was approved by Mr. Haddock. The amount expended by Judge Kent in going to Texas, returning, printing the bills in equity, and paying the necessary expenses
506 of filing the bills to which I have reference, were five hundred and sixty, 560, dollars, ($560.00.) This money I paid out myself, the same having been paid to me previously by the trustees for the purpose of paying these expenses. It is perhaps correct to state that this money was loaned by certain of the bondholders to the trustees. The mortgages to which I have reference, under which the bill which I have mentioned was filed, is one of those set out in this case. All communication was suspended between myself and the resident counsel at Galveston from 1861 till 1865. As soon as the means of travel would admit of a person passing in safety from Philadelphia to Texas, I procured Mr. Samuel Dickson to go Galveston for the purpose of ascertaining how matters stood in reference to the railroad, and also the proceedings which had been instituted in the United States court in 1860. He was absent about a month or more, and reported that the records had been destroyed or lost, and that everything was in such con-
507 fusion in Texas as to prevent the institution of any proceedings for the purpose of reviving the suit which had been commenced, or in any way to proceed upon the mortgage. He made also an elaborate report upon the then condition and prospects of the railroad. I paid his expenses down there and back again, amounting to the sum of five hundred ($500) dollars. I went to New York and conferred with the representatives of Judge Kent's estate, with a view to reviving the proceedings and to taking whatever steps were necessary. These expenses were paid after consultation with the representatives of Judge Kent's estate, Mr. Dickson having been employed by them at my instance and under my direction, as being the proper course to pursue for the benefit of the bondholders interested in the said mortgages in which Judge Kent and Mr. Haddock were trustees. No part of the said sum of five thousand dollars retaining fee agreed to be paid to me by Judge
508 Kent on behalf of the trustees has ever been paid. While I was

in consultation with the representatives of Judge Kent's estate as to the course pursued in reviving proceedings in Texas, I learned that the bill had been filed by N. A. Cowdrey and others in this case. The amount I claim to be allowed in this case is the sum of five thousand dollars agreed to be paid to me by Judge Kent on behalf of the trustees. I have stated the amount advanced to pay Mr. Dickson's expenses as being five hundred dollars. My recollection is that that was the amount, but Mr. Dickson is now absent in Europe, and I cannot lay my hands on the memorandum of what was paid. It was about that sum.

JOHN C. BULLITT.

Sworn to and subscribed before me this thirteenth day of July, A. D. 1869.

W. GRIER HIBBLER,
U. S. Commissioner.

UNITED STATES,
Eastern District of Pennsylvania:

509 I, W. Grier Hibler, a commissioner appointed by the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, under and by virtue of the acts of Congress, do hereby certify that the reason for taking the foregoing deposition and the fact is that the witness resides in the city of Philadelphia, in the State of Pennsylvania, at a greater distance than one hundred miles from the city of Galveston, in the State of Texas, where the suit is now pending.

I further certify that no notification of the time and place of taking said deposition was made out.

I further certify that on the thirteenth day of July, A. D. 1869, I was attended by the witness, who was of sound mind and lawful age, and, the witness having been by me carefully examined and cautioned and sworn to testify the whole truth, the deposition was by me reduced to writing in the presence of the witness, who subscribed the
510 same in my presence; and I have retained the said deposition in my possession for the purpose of transmitting the same by mail to the court for which the same was taken.

I further certify that I am not of counsel or attorney for either of the parties in the said deposition or caption named, or in any way interested in the event of the said cause.

In testimony whereof I have subscribed my name and affixed my seal this thirteenth day of July, A. D. 1869.

[SEAL.] W. GRIER HIBBLER,
U. S. Commissioner.

(Endorsement.) Ch. No. 1. Ch. 71. N. A. Cowdrey & others vs. G., H. & H. R. R. Co. & others. Deposition of John C. Bullett. Filed Aug. 16th, 1869. Levi Jones, clk.

511 (Endorsement on envelope containing foregoing deposition:) In the circuit court of the United States, fifth circuit, eastern district of Texas. Ch. 71. N. A. Cowdrey et al. vs. The Galveston, Houston and Henderson R. R. Co. Deposition of John C. Bullitt. Opened at the request of F. N. Bangs, esqr., counsel for the receiver, and by stipulation of counsel made this day, Aug. 16th, 1869. Levi Jones, clk. Recd. from the post-office at Galveston, July 19th, 1869, and filed. Levi Jones, clk. Address, To the circuit court of the United States for the eastern district of Texas.

(Endorsement on back of envelope :) Sealed up by me and de-
512 posited in the post-office at the city of Philadelphia, on this 13th day of July, A. D. 1869. W. Grier Hibbler, U. S. commissioner.

Order referring petition and claim of John C. Bullitt to Ed. T. Austin, master.—From minutes of court, December 16th, 1871, (vol. 2, page 236.)

N. A. COWDREY AND OTHERS
vs.
GALVESTON, HOUSTON & HENDERSON R. R. Co. & others. } Ch. No. 1.

This day came A. H. Willie, solicitor for John C. Bullett, an intervenor in this cause, and presenting the petition of said Bullett filed March 30th, 1868, and accompanying papers, asked that an order be made referring said petition, etc., to a master to examine and report to this court as to the claim of said Bullett, and what amount, if anything, should be allowed thereon. On consideration thereof, it is ordered that said petition be referred to Edward T. Austin, master in chancery, to examine and report thereon, provided, however, that all pro-
513 ceedings taken herein shall be at the cost of the parties to this suit or of said intervenor.

Report of master.—Filed May 23d, 1872.

In the circuit court of the United States for the eastern district of Texas, at Galveston.

N. A. COWDREY & OTHERS, COMPLAINANTS,
and
THE GALVESTON, HOUSTON & HENDERSON Railroad Co. and others, defendants. } Report of master. Chancery, No. 1.

In the matter of the claim of John C. Bullett for compensation from the trust-fund for legal services (and for expenses) rendered by him to the trustees in the first and second mortgages on the G., H. & H. R. R.

Report of Edward T. Austin, master, to whom was referred the above claim by order of court of December 16th, 1871, to examine and report to the court as to the claim of said Bullett, and "what amount, if anything, should be allowed thereon."

514 The master reports:

That after due notice to the parties, more than five days previous, that he would consider said claim on the 13th May, 1872, on said day the master examined the petition of the intervenor and Exhibit D, and the testimony of John C. Bullitt, taken debene esse, and the deposition of Daniel W. Gillett, of New York, (an ex parte affidavit,) and the briefs of the intervenor's counsel.

He finds that John C. Bullitt, the intervenor, was employed by the trustees in the first and second mortgages on the G., H. & H. R. R. foreclosed in this suit, (chancery, No. 1,) to foreclose the same in 1860, the coupons for interest on the bonds secured by said mortgages having fallen due and been dishonored for more than 60 days; that the trustees agreed to give him a retaining fee of five thousand dollars.

That the said Bullitt engaged in the service of said trustees, and did come from Philadelphia, where he resided, to Galveston, Texas;
515 that he did commence an action in the circuit court of the United States in Galveston, by filing a bill in equity, Exhibit D, and

had process issued thereon, in which he sought to foreclose the mortgage of 14th December, 1853, for $1,500,000.00, and also the mortgage of June 1st, 1855, for $750,000.00. The defendants were served with process and issue made on demurrer to the bill, when the suit was interrupted by the civil war in 1861, and during said war the records of the court were destroyed by fire and the trustees died. That upon the close of the war the intervenor took steps to continue the suit, and sent an agent to Galveston, who returned without doing anything, as is stated by intervenor in his testimoney, because of the great confusion prevailing. The expense of the agent sent to Galveston was five hundred dollars, about, but the master does not understand from the testimoney that this sum was paid by the intervenor from his own funds.

That while the intervenor was engaged in correspondence with the representatives of the trustees about renewing the suit brought
516 by him to foreclose said mortgages, this suit, chancery, No. 1, was brought by Cowdrey and James and others without consulting intervenor, and the same has been prosecuted to judgment without the assistance of the intervenor.

The intervenor claims his retaining-fee out of the trust-fund, $5,000.00, and the expenses of the agent sent to Galveston after the close of the war, and that he be allowed to become a party to the suit, (chancery, No. 1,) and that his claim be allowed and paid as part of the expenses of this suit. His bill was filed in this suit 30th of March, 1868.

The master finds the claim for the fee contracted to be paid by the trustees to the intervenor to be good as against the cestue qui trust in the mortgages. That the intervenor did render service under said contract, and was ready and willing to comply and fulfil his part of the contract, when he was prevented by the war, and subsequently by the owners of the bonds secured by the mortgages proceeding to en-
517 force the trust through the courts without the assistance of the trustees or their representatives, and that the cestus qui trust in in said mortgages are indebted to the intervenor through the contract made by their trustees in the sum claimed by him for retaining-fee, to wit, the sum of five thousand dollars, and that he should be allowed interest thereon from the time of filing his claim, 30th March, 1868.

The master also finds that the intervenor has a lien for his said claim on the trust-fund in the hands of the trustees, or the receiver appointed by the court to administer the trust, and that the same should be deducted from the amount coming out of the trust-fund to the bondholders of the first and second mortgages on the G., H. & H. R. R.

Respectfully submitted.

EDWARD T. AUSTIN, *Master.*

(Endorsement:) Ch., 71. Chancery, No. 1. Between N. A. Cow-
518 drey and others and the G., H. & H. R. R. & others, defendants. Report of Master Edward T. Austin on claim of John C. Bullett. Filed May 23rd, '72. Levi Jones, clk. Master's fee, $50.00.

Notice of filing master's report.—From rules, May 23d, 1872.

N. A. COWDREY AND OTHERS
vs.
GALVESTON, HOUSTON & HENDERSON RAILroad Company and others. } Ch., No. 1.

This day came Edward T. Austin, esqr., special master in this cause,

and files his reports upon the claims of John C. Bullett against the receiver, referred to him by order of the court, May 23d, '72.

Attest:

LEVI JONES,
Clerk U. S. Circuit Court, E. D. T., G.

519 *Decree settling receiver's a/cs and directing certain payments to be made by him.—From the minutes, May term, May 29th,* 1874.

N. A. COWDREY ET ALS.
v.
THE GALVESTON, HOUSTON AND HENDERSON Railroad Co. et al. } No. 1. In chancery.

The above cause coming on to be further heard on the petition of the receiver herein, N. A. Cowdrey, for the confirmation of his accounts and his discharge as receiver, and upon the report of the master made thereon pursuant to the order of the court made on the day of February, 1874, and upon the application of the several intervenors appearing in said cause for the adoption of the report of said master and the disallowance to the receiver of the various items reported by the master, as in suspension for the judgment and decision of the court, and upon the appearance before the court, in person and by counsel, of the said several parties, and the submission of their several claims on evidence and argument, and the court being fully advised as to the various rights of the several parties as involved in said cause, it is, therefore, considered, adjudged, and decreed that the report of Edward
520 T. Austin, master, charging the receiver with a balance of six thousand nine hundred and sixty-three dollars and ninety-nine cents, as for cash in hand, and disallowing the credits claimed by the receiver for certain items and vouchers specified in the said report, amounting to the sum of fourteen thousand and twenty-nine dollars and fifteen cents, be, and the same is hereby, confirmed; and that the receiver has in his hands and is responsible for the sum of twenty thousand nine hundred and ninety-three dollars and fourteen cents, to be disposed of, paid, and distributed as hereinafter directed in and by the decree, and which it is hereby ordered and decreed that he do pay accordingly forthwith; that is to say, it is further ordered, adjudged, and decreed, that out of the said surplus in his hands he do pay, first, the several sums and amounts heretofore found due and ordered to be paid to the various and respective parties for losses of freight and injury to property occurring under the administration of the Galveston, Houston and Henderson Railroad whilst in the hands of the receiver appointed by this court, the same being as follows: W. A. Ellis & Co., one
521 thousand and nine $\frac{14}{100}$ dollars, with interest thereon from February 29th, 1872; Buck & Levy, one hundred and eighteen $\frac{41}{100}$ dollars, with interest thereon from Feb. 21st, 1872; John W. Norris, one thousand and eighty-six $\frac{80}{100}$ dollars, with interest from May 6th, 1872; Robert Hoffman, fifty-two $\frac{82}{100}$ dollars, with interest from February 21, 1872; Moody & Jemison, three thousand one hundred and fifty-seven $\frac{48}{100}$ dollars, with interest from May 6th, 1872; C. M. Pearre, eighty-four $\frac{04}{100}$ dollars, with interest from February 15th, 1873; Richard J. Gallway, eighty-one $\frac{67}{100}$ dollars, with interest from Aug. 26, 1870; F. Halff & Co., five hundred and twelve $\frac{75}{100}$ dollars, with interest from June 29th, 1873; J. R. Mobley, one hundred and forty-five $\frac{25}{100}$ dollars, with interest from May 15th, 1871; Kenada & Carter, one hundred and eighty-six $\frac{30}{100}$ dollars, with interest on $162.50 from February 15th, 1873;

J. P. Hair & Co., seventy $\frac{90}{100}$ dollars, with interest from January 1st, 1872; J. R. White, one hundred and fifty dollars, with interest from May 28th, 1874; the interest on all said amounts being eight per cent. per annum, together with the costs and allowances to the master in each of said cases.

And it appearing to the court that claims for similar losses are still pending in said court, as follows: Alford & Veal, for one hundred and eighty $\frac{66}{100}$ dollars; R. M. Collins & Co., two hundred and twenty-four $\frac{03}{100}$ dollars; the said receiver is ordered to retain in his hands the sum of five hundred dollars to comply with any order for their payment which may be made by the court in said cases.

After the payment thereof, the said receiver shall pay, secondly, the further costs of the clerk and marshal of this court which have accrued in this cause and not heretofore paid, as follows. To the clerk $911.21 *dollars*; to the marshal, $4.75 *dollars*; and to the master, in addition to the allowance made for his last report, $100.00; to J. C. C. Winch, the
523 amount allowed to him as special master in this cause, five thousand dollars, (which includes the sum of five hundred dollars heretofore paid him by the receiver;) to Edward T. Austin, master in chancery, one thousand dollars, allowed for his services in the last reference; to F. T. L'Estrange, three hundred and fifty dollars, for his services as an accountant in said reference; and the said receiver is allowed to retain the sum of twenty-five hundred dollars for his services since his last settlement to the present time.

And, after the payment of the above amounts, that the said receiver pay, thirdly, to John C. Bullitt the sum of twenty-five hundred dollars, which amount is hereby allowed and directed to be paid to him for his fees and expenses as solicitor and counsel of the trustees in the first and second mortgage bonds, in full of his claim presented in this cause.

It is further ordered and decreed that the receiver do then, after paying the above amounts, respectively, pay to the complainants the balance due to them for costs and expenses, according to the former decree of this court.

It is further ordered and decreed that, if the amount in the
524 hands of the receiver should not be sufficient to pay all the said claims and amounts, that then the balance of any costs, fees, and charges due to the officers of the court be paid by the complainants.

It is further ordered and decreed that all further proceedings against F. P. James on his bond for the sum of fifty thousand dollars for the payment of losses by the receiver be suspended until the court shall further order.

It is further ordered that, upon payment by the receiver of the severral amounts hereinbefore specified in the order specified up to the said sum of twenty thousand nine hundred and ninety-three dollars and fourteen cents, he be discharged and exonerated from all further duties and liabilities as such receiver.

525 *Notice of appeal by receiver & by compl'ts.—Filed May* 29, 1874.

Circuit court of the United States, eastern district of Texas. May term, 1874.

N. A. COWDREY & OTHERS *vs.* GALVESTON, HOUSTON & HENDERSON RAILroad Company, and others.	Notice of appeal. May 29th, 1874.

The receiver in the above-entitled case and the complainants now ap-

peal to the Supreme Court of the United States from so much of the decree rendered at this term of the court as refuses to give the receiver a credit on his acctmts for the sum of $14,025.15, it being the items suspended by the master to whom the account had been referred.

And the receiver and complainants appeal from so much of said decree as gives priority in claim upon the fund in the hands of the receiver, known as claimants for lost goods, damages to property, &c., amounting to about the sum of $7,575.61, including interest to June 1st, 1874, and exclusive, so far as the amount is concerned, of cost, but not ex-
526 clusive, so far as costs and master's fees are concerned, of priority of lien upon said fund, and from so much of said decree as orders and directs anything to be paid to John C. Bullitt, esq., and from so much of said decree as defers or omits direction to the receiver to pay over to the complainants in the case the amount remaining due to the complainants, alleged by them to be the sum of $36,023.47 with interest from December 15th, 1871, under the former orders of this court, made at the May term, 1871.

N. A. COWDREY,
Receiver.
N. A. COWDREY & OTHERS,
Complainants.

Said appeal is allowed by the court to act as a supersedeas, and the bond of N. A. Cowdrey, as principal, and T. W. Peirce, as surety, in the penal sum of $25,000, having been presented, the same is now approved by the court.

Galveston, May 30th, 1874.

AMOS MORRILL, *Judge.*

(Endorsed:) N. A. Cowdrey & others vs. G., H. & H. Railroad
527 Company & others. Notice of appeal by receiver and by complainants from decree settling receiver's accts., made May 29, 1874. Filed May 29th, 1874. C. Dart, clk.

Order allowing appeal.—From minutes May term, May 29, 1874.

N. A. COWDREY & OTHERS
v.
GALVESTON, HOUSTON & HENDERSON RAILroad Company & others. } No. 1. In chancery.

The receiver herein, N. A. Cowdrey, on his own behalf and as complainant herein, on his own behalf and on behalf of the other complainants in this suit, having given notice in open court of appeal to the next term of the Supreme Court of the United States from so much of the decree of this court this day entered herein as refuses to give the receiver a credit on his accounts for the sum of $14,025.15, it being the items suspended by the master to whom the accounts had been
528 referred, and from so much of said decree as gives priority in claim upon the fund in the hands of the receiver known as claimants for lost goods, damages to property, &c., amounting to about the sum of $7,575.61, including interest to June 1st, 1874, and exclusive, so far as the amount is concerned, of cost, but not exclusive, so far as costs & master's fees are concerned, of priority of liens upon said fund, and from so much of said decree as orders and directs anything to be paid to John C. Bullitt, esqr., and from so much of said decree as defers or omits

direction to the receiver to pay over to the complainants in the case the amount remaining due to the complainants, alleged by them to be the sum of $36,023.42, with interest from December 15, 1871, under the former orders of this court, made at the May term, 1871, the said appeal is allowed by the court; and it is ordered that said N. A. Cowdrey execute a bond, with good and sufficient surety, to be approved by the court, or a judge thereof, in the sum of twenty-five thousand dollars, payable to the clerk of the circuit court of the United States for the east-
529 ern district of Texas, sitting at Galveston, for the benefit of, and in trust for, all the parties named in the decree of said court this day rendered in said cause, as th ir several interests appear therein, and are specified by said decree, and from which appeal is taken by the said Cowdrey.

530 *Bond on appeal from order settling receiver's accounts.*

In the circuit court of the United States for the eastern district of Texas, sitting at Galveston.

N. A. COWDREY ET ALS.
v.
THE GALVESTON, HOUSTON & HENDERSON Railroad Co. et al. } No. 1.

Bond on appeal from order settling receiver's accounts.

Know all men by these presents that we, N. A. Cowdrey, as principal, and Thomas W. Peirce, as surety, are held and firmly bound unto the clerk of the circuit court of the United States in and for the eastern district of Texas, sitting at Galveston, in the full sum of twenty-five thousand dollars, ($25,000.00,) for the benefit of and in trust for all the parties named in the decree of said court this day rendered and hereinafter referred to, as their several interests appear in and are specified by said decree, to which payment we bind ourselves and our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this the twenty-ninth day of May, A. D. 1874.

Whereas at the May term of the circuit court of the United
531 States for the eastern district of Texas, sitting at Galveston, on, to wit, the twenty-ninth day of May, A. D. 1874, in a suit depending in said court between N. A. Cowdrey and others, complainants, against the Galveston, Houston and Henderson Railroad Company and others, defendants, a decree was rendered by said court upon the petition of the receiver in said cause, N. A. Cowdrey, for the confirmation of his accounts and his discharge as said receiver; and upon the report of the master made thereon pursuant to the order of said court, made on the day of February, 1874, and upon the application of the several intervenors appearing in said cause for the adoption of the report of said master and the disallowance to the receiver of the various items reported by the master as in suspension for the judgment and decision of the court, adversely to said receiver and in favor of the said several parties as enumerated in said decree; and an appeal from said decree having been allowed to the next term of the Supreme Court of the United States, to be holden at Washington on the 2nd Monday of October next, and due notice of such appeal having been given to all parties in in-
532 terest in open court at the time of the rendition of said decree:

Now, the condition of the above obligation is such, that if

said receiver shall prosecute the said appeal to effect and answer all damages and costs if he fail to make his appeal good, and perform such decree as the said Supreme Court may make in the premises, then the above obligation to be void; otherwise to remain in full force and virtue.

Galveston, May 29th, A. D. 1874.

N. A. COWDREY. [SEAL.]
T. W. PEIRCE. [SEAL.]

This appeal-bond approved this 30th day of May, 1874.

AMOS MORRILL, *Judge.*

(Endorsements:) Ch. 1. N. A. Cowdrey & others v. G., H. & H. R. R. Co. and others. Bond on receiver's appeal. Filed May 30, 1874. C. Dart, clk.

533 *Order approving appeal-bond.—From minutes, May term, May 30, 1874.*

N. A. COWDREY & OTHERS
v.
GALVESTON, HOUSTON & HENDERSON RAILROAD CO. and others. } Ch., 1.

N. A. Cowdrey this day appeared in open court and presented his bond for $25,000 to perfect the appeal herein, with Thomas W. Peirce as surety, and the said bond being examined, is hereby approved.

534 UNITED STATES OF AMERICA,
Eastern District of Texas:

I, C. Dart, clerk of the circuit court of the United States for the eastern district of Texas, at Galveston, do hereby certify the foregoing five hundred and thirty-three (533) pages of writing to contain a true and correct transcript of all the record and proceedings of said court in the cause named in the caption hereof, which were before the said court at the May term thereof, 1874, in the matter of the settlement of the accounts of N. A. Cowdrey, the receiver appointed by the court in the cause referred to, and upon which the decree rendered by said court on the 29th day of May, 1874, settling the accounts of said receiver, and directing certain payments to be made by him, was based, and now appealed from in part by said Cowdrey, as receiver, and as complainant on his own behalf and on behalf of the other complainants in said cause, as the said record and proceedings now appear in my office.

To certify which, witness my hand and the seal of said circuit court, at Galveston, this 21st day of August, A. D. 1874.

C. DART,
Clerk U. S. Circt. Court, E. D. T., G.

(Indorsement on cover:) No. 282. N. A. Cowdrey et al., appellants, vs. The Galveston, Houston and Henderson Railroad Company et al. E. Texas C. C. U. S. Filed 2nd October, 1874.

No. 85.

In Supreme Court of the United States,

OCTOBER TERM, 1876.

Appeal from the Circuit Court of the United States, for the Eastern District of Texas, at Galveston.

N. A. COWDREY, RECEIVER, AND OTHERS, APPELLANTS,

vs.

CERTAIN CREDITORS OF THE GALVESTON, HOUSTON AND HENDERSON RAILROAD COMPANY AND OTHERS, APPELLEES.

W. P. BALLINGER,
Of Counsel for Appellants.

GALVESTON NEWS PRINT.

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STATEMENT OF THE CASE.

This case grows out of a former suit brought in the Circuit Court, in Texas, by Cowdrey and others, to foreclose mortgages or trust deeds executed by the Galveston, Houston and Henderson Railroad Company. The Galveston and Houston Junction Railroad Company, and a number of persons composing "The Real and Personal Estate Association," were also made defendants to the bill, and the railroad of the first company, the railroad of the Junction

Company and a large amount of property, real and personal, claimed by the latter defendants were proceeded against as subject to the mortgages, and all of it, by order of the court, was seized and put into the hands of a Receiver, and held and used by him near five years. At the final hearing of that cause, the mortgages were adjudged valid, and the Galveston, Houston and Henderson Railroad and certain land certificates belonging to its company were ordered to be sold towards their satisfaction; but the Junction Railroad and its property, and that of the Real and Personal Estate Association were decreed not to be subject to the mortgages. The final decree of the Circuit Court, made by Judge Swayne, provided for the distribution of all proceeds of sale as follows:

That out of the cash payments to be made by the successful bidders at such sale, there shall be first paid, under the direction of this court, the amounts that may be found justly due, as hereinafter stated, to the Real and Personal Estate Association and to the Galveston and Houston Junction Railroad Company, for the use of their property since it has been in the possession of the Receiver; and generally all sums found to be properly due by said receiver, or any other parties acting under the authority of the court, or by its orders, upon the persons entitled thereto presenting their claims to this court and obtaining an order and decree as to them, determining the proper amount thereof, subject to an appeal by any party interested therein; and that out of the proceeds of such sale be next paid the proper costs of this cause, to be taxed by the clerk of this court, and the expenses of the individual complainants in prosecuting this cause for the benefit of all parties interested, and that the remainder of such proceeds shall be distributed among the several holders of the mortgage bonds of said original Galveston, Houston and Henderson Railroad Company, according to their respective priorities as previously determined, and in case any contro-

versy shall arise thereon reference may be had to this court for the determination thereof. (Printed Record, page 3.)

The decree also provided for proper reference to a Master under this decree.

On appeal to the Supreme Court of the United States this decree was affirmed, and the cause was returned to the Circuit Court with its mandate for "such execution and proceedings to be had in said cause as according to right and justice and the laws of the United States ought to be had." (p. 9.)

The case came on for further hearing June, 1871, before Woods, Circuit Judge, and on the report of the Master, and on exceptions by both sides, a decree was made directing sale of the Galveston, Houston and Henderson Railroad to be made December 1, 1871—payment out of proceeds to the Junction Company and R. and P. E. Association for use, etc., of their property by the Receiver $416,869 39, less proceeds of sale of land scrip paid to them, $52,400 51, leaving $346,468 88, with 8 per cent. interest from June 1, 1871.

That there be paid to the Receiver, on account of any indebtedness created by him, or advances made by him under the order of this court, such sum as may at that time be due to him, payments to said defendants and the Receiver to be *pro rata* if not funds to pay in full.

Next to the complainants in the cause the sum of $50,515 56 as and for the expenses and compensation of the individual complainants in prosecuting this cause for the benefit of all parties interested.

Also the costs in the case out of the funds in the hands of the Receiver or proceeds of sale.

Time for presentation of the mortgage bonds was extended to the 1st of December, 1871. (pp. 25, 26.)

The items of above allowances to complainants show, actual cash paid out by them, $35,515 56, and an allowance as compensation to Cowdrey, $15,000. (pp. 27, 28.)

December 15, 1871, Duval, District Judge of the Western District of Texas, holding the Circuit Court at Galveston, rendered a further decree confirming the sale of the railroad to F. P. James of the city and State of New York for $675,000, and directing the distribution thereof as follows :

Marshal's costs, $1,096; to the defendants, the Junction Railroad and R. and P. E. Association, $380,181 55; to the Receiver, for loans and debts incurred under the orders of the court, $277,052 57. The court found the amount due the complainants, under the order of this court, at its May term, with interest, $52,693 35, of which there was directed to be paid $16,669 88, making the total, $675,000; leaving due complainants under said order at May term, the sum of $36,023 47.

This decree also provides:

And, whereas, it appears to the Court that at and before said sale, the Receiver read notice notifying all proposed purchasers that he would ask the court to require the purchaser to assume and pay all claims which are made or may be made, and allowed by the court, against the Receiver, growing out of the operation of the railroad while in the custody of the court, for loss or injury to property, or for injury to persons. * * * It is ordered and decreed, 1st. That upon said purchaser filing his undertaking in this

court, in this cause, in the sum of $50,000, obligating himself and his assigns to pay all claims which the Receiver is not in funds to pay, that may be allowed by the court against the Receiver, for loss or injury to property or to the person, and upon filing herein the receipt of the parties hereinbelow named, that said sale of said railroad, franchises and property be and the same is in all things approved and confirmed, conveyance directed to be made and deposit for security of bid returned. (28, 29, 30.)

The receipt specified being for the payments above stated, and same was duly filed (32).

The undertaking filed in court by F. P. James, the purchaser, was as follows:

Whereas, in the above entitled cause the premises in the possession of N. A. Cowdrey, the Receiver, have been sold, and the sale thereof confirmed by this court; and whereas, the railroad has been in the possession of this court since February 27, 1867, to this date, and it is possible that there may still be outstanding and unliquidated claims against the Receiver, growing out of the operations of the railroad, such as for lost or damaged freight or injuries to persons or property, or for expenses allowed by the court:

Now, therefore, I, Fred. P. James, of the city and State of New York, the purchaser of said premises, do hereby, in consideration of the premises, obligate myself, my heirs, successors, and assigns, in the penal sum of fifty thousand dollars, to pay any and all claims against said Receiver which this court shall consider him liable to pay in excess of the funds and property still in the hands of the Receiver.

In witness whereof I have hereto set my hand and seal, at the city of Galveston, this....day of December, 1871.

In presence of F. P. JAMES.

JAMES F. MAGUIRE.

During the progress of the cause various claims had been presented to the court for lost freight, etc., under the administration of the Receiver, referred to a Master, allowed by him and confirmed by the court, amounting in the aggregate to say $

Some of these parties obtained a rule of the court

on the purchaser of the railroad, F. P. James, for the payment of the amount of said claims, and on hearing thereof obtained orders on him for their payment (111, 136).

Others obtained orders of payment on him without notice (122, 140, 145, 150).

Claims for $5000 for services as attorneys to the original trustees, in the first and second mortgages, was presented by John C. Bullitt, the facts as to which will be stated on the special answer of that claim.

February 25, 1874, the Receiver filed his final account current, showing balance in his hands, $6,981 07, and asked instructions of the court as to its payment, stating that he owed connecting railroads $9,679 54; balance due complainants for their costs in prosecuting the case, $36,023 47; Master Winch $5,000, and that there had been claims for lost baggage and freight to about $6,000, allowed for payment by the court (31, 32).

On the 27th December, 1874, the Receiver represented that "his monthly accounts had been regularly filed as required by the order of the court, and had not been objected to or opposed within the time limited by the rules governing the practice of the court." And he prayed discharge with directions as to appropriation of the balance reported in his hands (33).

December 28, 1874, John C. Bullitt excepted to to the allowance of the Receiver's final account and discharge, claimed payment of $5,000 and prayed

reference of the accounts of the Receiver to Master Austin (33).

February 28, 1874, the District Judge, Morrill, ordered the reference (33, 34).

May 26, 1874, Master Austin made his report (34, 35): "That there were found sundry disbursements for purposes not considered by the Master as proper expenditures by an officer of the court in charge of a fund, viz: *for contesting a subsidy proposition made to the city of Galveston by the Galveston, Harrisburg and San Antonio Railway Company.* The expenditures by the Receiver for like purposes the Master suspends for the judgment of the court."

These suspended items amounted to $14,029 15.

May 29, 1874, the court made its final decree, confirming the report of Master Austin as to the account of the Receiver, disallowing the items of $14,029 15, and finding balance against him, $20,933 14, and directing payment of same as follows: To the several parties for loss of freight, etc., in the aggregate say about $7,575 61; clerk's and marshal's costs, allowances to Master and accountant, and Receiver's salary, in aggregate say about $9,865 96;

And after the payment of the claimants that the said Receiver pay, thirdly, to John C. Bullitt the sum of $2,500, which amount is hereby allowed and directed to be paid to him for his fees and expenses as solicitor and counsel of the trustees in the first and second mortgage bonds, in full of his claim presented in this cause.

Then to the complainants the balance due to them for costs and expenses according to the former decree of this court. All which payments of the $20,993 14 were to release the Receiver, and all proceedings on the bond of F. P. James were suspended until further orders.

From this decree appeal was taken on the grounds which are now here assigned as errors in said decree.

First, by Cowdrey, as Receiver:

That the court erred in the disallowance of his credits of $14,025, and finding balance due by him on his accounts of $20,993 14.

By Cowdrey and the complainants:

Second—For decreeing payment by the Receiver of the various claims for lost goods, etc., say $7,575 61, out of the funds in the hands of the Receiver.

Third—For decreeing payment by the Receiver out of funds in his hands to John C. Bullitt of $2,500.

Fourth—For decreeing postponement of payment to the complainants on account of balance of $36,024 47 due them for expenses and costs in the prosecution of this cause, out of the funds in the hands of the Receiver, to the payment of said amount of claims for lost freight, etc., and said amount to J. C. Bullitt respectively.

POINTS AND ARGUMENT.

First—The disallowed credits to the Receiver of $14,029 15 for contesting subsidy to the Galveston, Harrisburg and San Antonio Railroad Company.

The attention of the court is requested to the statement of the Receiver in behalf of these rejected items. After stating the suspension of this allowance by the Master "for expenses incurred by the Receiver, in contesting two proposed subsidies by the city or county of Galveston, of $500,000 to aid

in building a railroad from Galveston to Harrisburg or Houston, parallel with the railroad placed in the Receiver's hands by the court," he says:

The matter was sprung upon the Receiver suddenly, the meeting of voters on the subject was called at short notice—the Receiver thinks thirty days—to be held in the month of August, a dangerous month for visiting Galveston. The Receiver did not consider it prudent, as regards his health, to come personally to Galveston at that time of the year.

"The Receiver was obliged, by the sudden necessities of the case to act upon his own judgment, without the official advice or instructions of a court. He informally applied to the Hon. Associate Justice of the S. C., U. S., who appointed him to the office for advice. The Associate Justice would not act officially without notice to parties in the suit; the question would be decided by the voters before notice could be given. He, the Associate Justice, informally and verbally said to the Receiver that it was the Receiver's duty to protect and defend the franchises placed in his possession by the court, and that he would consider him liable upon his official bond if he did not do so. Whereupon the Receiver, in the exercise of his best judgment, gave instructions to his agents in Galveston, whereby they incurred the expense of $14,029 15, suspended by the Master. The Receiver is informed and believes that every dollar of said $14,029 15 was expended in good faith to accomplish the object sought, viz: the defence and protection of the property placed in his hands by the court, by defeating a large appropriation to aid in building a parallel railroad.

"The Receiver's efforts were successful in preventing the proposed construction of said parallel road, by three different companies, viz: the Galveston, Harrisburg and San Antonio R. R. Company, the Central Transit R. R. Company, and the Houston and Texas Central Railroad Company. The proposed parallel railroad has not been built, and the property in the hands of the Receiver was protected from being largely impaired in value by the non-building of said road. Wherefore, the Receiver respectfully submits to the

court that he should be allowed a credit for said expenses to the amount suspended by the Master, viz: the sum of $14,029 15." (45, 46.)

It is to be noted that the accounts of the Receiver had been filed monthly, and not objected to until February, 1874, when a general reference of them was made to the Master; that no specific objection to the subsidy expenditures was ever made by any creditor, but only made generally and broadly by the Master, without any inquiry or examination whatever as to the mode in which such money was expended. Neither before the Master, nor court, was any allegation of any act of fraud, corruption, malpractice, but the decision was, that the Receiver, being an officer of the court, in charge of a trust fund, could not be allowed to incur expenditures to contest a city subsidy to a parallel railroad.

Nor was the decision upon the ground that the Receiver had acted without the previous order of the court. He recognized his duty to have obtained such order; but there was no court in the district, and no judicial officer accessible to him to whom he could make application. He did the best and utmost he could, not to act without judicial advice. But it was a case of immediate exigency, and in all such cases, especially after the long lapse of time which occurred, the court will not fail to sanction the act of its Receiver, not only if it would have permitted it, but unless it went clearly beyond the power of the court.

And this is understood to be the decision of the court below: that an Equity Court can not, or I will

say, ought not to permit a Receiver to make expenditures of money under any circumstances, to contest a subsidy by a city, in which it has its own situs, for the construction of a rival line of railroad.

I say under any circumstances, because circumstances would be difficult to imagine of a more urgent character than those which surrounded this Receiver.

He had under his management a road from Galveston to Houston, only fifty miles in length. The proposed subsidy was to extend the Galveston, Harrisburg and San Antonio Railroad from Houston to Galveston, a parallel road, within a few yards or feet of it its entire length, when there was already a line of tide-water transportation along side.

Suppose there had been no Receiver, but the road had been in the management of the directors of the corporation. They would have been trustees—they could do nothing illegal or against public policy—could *they* have done nothing, and expended no money of the trust in their hands to prevent the subsidy?

I have a very strong conviction that the decision on the acts of the Receiver in this case is not sound and safe.

What did the Receiver actually do? He employed counsel and obtained from them an "opinion on railroad subsidy;" published it, and also employed them to bring suit in the courts to test the election. He did this at a cost of say $1365, and the items of the expense are among those disallowed by the court. (pp. 40, 43, 44.) When proceedings,

under such a subsidy law, so vitally and directly affecting the Galveston, Houston and Henderson Railroad were set on foot, was the employment of counsel in relation to those proceedings, and to test them in court, an abuse of the authority and discretion of the Receiver? I am unable to conceive that the statement of this question, in the light of the surrounding facts, admits of being strengthened by argument, and it is submitted to the court as one of the errors committed by the court below.

But the main expenditures were for obtaining the registration of the voters of the city of Galveston. The court, I trust, understands this precisely. Two-thirds of the voters were necessary to carry a subsidy; but the voters must register within ten days. Now, what the Receiver did, so far as there is evidence or presumption, was, not to seek to control any man's vote, but to induce all the voters of the city of Galveston *to register*, so that they might exercise their rightful privilege of voting, and that from mere supineness and indifference they should not be ignored, and lose their rights as voters, on an issue of such concern. Now, was this wrong? Does it smell of wrong? Was it unwise, imprudent, misjudged by the Receiver?

The affidavit of the Receiver connects the Houston and Texas Central Railroad with the subsidy measure, so that it was a movement by the only two connecting railroads with the Receiver's railroad, to get a donation of half a million of dollars—ten thousand dollars a mile—over a dead level prairie, to furnish them a road running through to Galveston.

This would have left the Receiver's road without any connection beyond its own terminus. And this half million of dollars was to be a mere donation, not a loan, nor a stock subscription, but a gratuitous subsidy, to be paid for by taxation on the property of the city of Galveston, of which the Receiver's road was the largest tax payer. This road had been then in custody and management of the court, by its Receiver, over four years, its bondholders almost all resident in Europe. It was advertised for public sale in the December following.

By the law of Texas, on the petition of any fifty voters, for a city or county subsidy to any scheme of internal improvement, the County Court was bound to submit the same to the vote of the city or county, after thirty days' notice, and to require a registration of voters within ten days, who alone were permitted to vote on the subsidy, and a majority of two-thirds would carry the subsidy. (Act Apl 12, 1871, Laws, p. 29; Act May 31, 1871, Laws, p. 139.)

The writer of this felt himself justified before the Supreme Court of Texas in a cause in which a subsidy of a half million of dollars from the same county, Galveston, of full 6000 voters was claimed by a vote of 706 votes, [*The Texas and Mississippi River Canal aud Navigation Company against the County Court of Galveston*, 44 Texas,] to pronounce this statute "to have been a contrivance of the very genius of fraud." It was on the statute book but a short time, and the Constitution of the State now prohibits such statutes forever.

Applicants for the subsidy could select their own point of time.

Let the court realize the situation. In the month of August the Receiver is startled with the intelligence that after a ten days' registration of voters, those voters would determine whether a road alongside of his, from Galveston to Houston, should be built for the Galveston, Harrisburg and San Antonio Railroad Company, by a donation of the public taxes of the city of Galveston.

Its construction would have impaired the value of the railroad and franchises under his management irreparably. The means by which it was to be accomplished was a proceeding under a law of the most doubtful constitutionality, in which the door to fraud stood wide open. The Federal District bench was vacant. I suppose there was no Federal judicial officer of the circuit within it. The Receiver says under oath there was none "who had jurisdiction whose advice or instruction could be obtained," alluding, of course, to the necessity that it should be immediate. The Receiver was the only representative of the property and franchises in his management.

What was the Receiver to do? Could he do nothing? Was he powerless—compelled to be silent, passive, acquiescent in this subsidy business? Because he was an officer of the court, and in the management of a trust, could he expend not a dollar for the protection of that trust thus fatally imperiled?

Was the Receiver to be vigilant to repair track, to furnish rolling stock, to keep his railroad in order and at work, but when an intended speculative

scheme was in progress, the carrying out of which would have been the destruction of the business and almost the existence of the property and franchises under his management, was his duty that of total official indifference and inaction? Was he to take no step which, being the owner of the property and being an honest, faithful citizen—or being one of the directors of an incorporation controlling it—he would have taken to protect the property? Because the property was in his hands for management and administration, as an officer of the court, and a trust, was it therefore bereft of any means of protection it would have possessed in any other condition? Is this the inevitable and equitable situation in which great interests of property and rights are placed when a court, assuming that it can best promote the interests of all concerned, assumes their control?

It seems to me, now, that if a judge had been on the bench at Galveston, if the Receiver had come before him with a statement of the facts, and said: There is a proposition to tax the city of Galveston a half million of dollars to enable a railroad which is now one of my main connecting lines to extend itself into the city of Galveston parallel to the railroad which your Honor has undertaken to protect and administer—itself already parallel to a line of tide-water navigation—and to tax your railroad most largely of all tax payers for this purpose; the project is of doubtful legality; it is peculiarly open to unfair accomplishment; I want the proceedings watched and guarded, so that they may not be

illegal; so that fraud or wrong shall not be practiced. For this purpose I want to employ counsel, and if in the judgment of counsel legal proceedings ought to be instituted to test or avoid this subsidy, I request the authority.

What would have been the duty of the judge? To have said: I have undertaken the management of this railroad: I stand in place of its stockholders and creditors; I can authorize you to look after its operations, day by day, but I can sanction no attention on your part, no precaution or duty, no employment of counsel, with respect to this subsidy.

The Receiver would proceed: This parallel railroad can not be built except by a vote of two-thirds of the voters of the city of Galveston; only those have a right to vote who will take the trouble to register within the next ten days; those interested to procure a gratuity of $500,000 will be active to procure all those to register who are favorable to it. But the general public are supine, and many uninformed. On account of the great and vital interest of the subject to the G., H. and H. Railroad, I ask authority to make such expenditure as will obtain as general a registration of the voters as practicable. The sum expended will be much less than the taxes the railroad will have to pay, as a tax payer, in one year, to build this rival enterprise.

Should the judge have declared that the grant of any such authority, limiting and guarding it by the closest scrutiny, to acts fair, proper, honorable in matters of elections, was beyond his own powers or duties?

If so, then this assumption by courts, through Receivers, of the management of a railroad, continued for years in the exigencies of new and fast developing communities, seems to me a form of equitable justice liable to become wholly without any of its power. Anise and cummin may be provided for, but the weightiest matter, the very salvation of the road, may suffer mortal neglect.

It is, of course, easy to assume and then stand aghast at the proposition, that the court or its Receiver should become a corruptionist of the ballot box—should attempt, by money, to thwart the free will of the people at an election. If this subject bears this as its true complexion, not merely is it incapable of approval, but deserves the gravest reprehension. But I can not perceive that any of the acts involved at all touch the ballot box. Because a popular election is made the method of building up business enterprises, through the aid of public taxes, which may rival and destroy like enterprises, shall these latter fold their hands and make no inquiry into legal rights—into the legality of proceedings—or adopt no securities against fraud and other wrong? Schemes of all others the most questionable, the most abounding in wrong, would thus become invested with a sort of sanctity. A court, a Receiver, in charge of great interests, to employ no counsel, institute no inquiry, adopt no safeguards, and lose every faculty of self-defense against the construction of a rival railroad by a subsidy at a popular election! It has been said

that nothing was so so curious in all history as that of veneration.

A reflection lying beyond the case is suggested by it. In America the ballot-box is made the arbiter not alone of the problems of government, but in many instances of the mere practical business issues of a community, and as in this case of the simple question, shall the tax payers of Galveston vote a gratuity of $500,000 to build a rival railroad to the G., H. and H. Railroad? Shall the courts assume that no agency can enter into a popular election by by those who seek to affect the result, except those of fraud and corruption or some manner of wrong? That money expended to affect the result must have been an evil expenditure? Shall we glorify ourselves that the democratic system is the ballot box, but that all efforts to affect the ballot-box are forbidden? This is the merest cant. Let all corruption be called corruption; but so long as public rights or private rights are made to depend on the ballot, money must be expended wisely, virtuously, inevitably to operate on the result. If the Receiver did any wrong thing the court should have disowned it; but "to contest the subsidy" in itself was right and a duty, and contains no implication of wrong.

The character, authority and duties of a Receiver had been admirably prescribed with respect to the Receiver in this case. Mr. Justice Bradley said:

"Where a Receiver is a Manager as well as a mere Receiver, his duties and responsibilities are largely increased, and the management of a business like that of a railroad is one of the most difficult and responsible duties that a Re-

ceiver is charged with. It requires a man of first rate qualities and attainments." (p. 347)

It may be laid down as a general proposition that all outlays made by the Receiver in good faith, in the ordinary course, with a view to advance and promote the business of the road, and to render it profitable and successful, are fairly within the line of discretion which is necessarily allowed to a Receiver entrusted with the management and operation of a railroad in his hands.

His duties, and the discretion with which he is invested, are very different from those of a passive Receiver, appointed merely to collect and hold moneys due on prior transactions, or rents accruing from houses and lands. And to such outlays in ordinary course, may properly be referred, not only the keeping of the road, buildings and rolling-stock in repair, but also the providing of such additional accommodations, stock and instrumentalities as the necessities of the business may require, always referring to the court, or to the Master appointed in that behalf, for advice and authority in any matter of importance, which may involve a considerable outlay of money in lump. And except in extraordinary cases, the submission by the Receiver of his accounts to the Master at frequent intervals, whereby the latter may ascertain from time to time the character of the expenditures made, and disallow whatever may not meet his approval, will be regarded as sufficient reference to the court for its ratification of the Receiver's proceedings. In extraordinary cases, involving a large outlay of money, the Receiver should always apply to the court in advance, and obtain its authority for the purchase or improvement proposed. (p. 336.)

The same Judge said:

"I will make an order that the Receiver be authorized to purchase such new rolling-stock, iron, rails, machinery, etc., as in his judgment may be required for the transaction of the business, beyond the rolling-stock, rails and machinery now in his possession and control under his appointment as Receiver, and as the funds will reasonably justify. Every dollar fairly expended in the road or rolling-stock will be more than reimbursed by the increased value it will give to the whole property when sold." (p. 352.)

I think it does not strain the principle, I think

it perfectly on the same line of principle, that the court should say to the Receiver: The building of a parallel road to yours will greatly diminish your receipts and lessen the value of your road; the mere adoption of the plan, although it may never be carried out, will largely affect the value of your road at public sale by the Marshal. Whatever you can do through counsel to secure strictness and accuracy in the proceedings, and to test their legality; whatever you can do to secure a general registration of voters, so that tax shall not be imposed upon your road, or a rival to it constructed, except by the actual majority the law requires, is money properly and well expended in the best interests of your trust, and in accordance with the duties undertaken by the court in its administration of this road.

In the same case (Woods, 335) objections were made in the accounts of this Receiver to his contracts for "rebatements." Which meant that the Receiver agreed with commission merchants and other ship ping agents of cotton to pay *them* a certain percentage for the business of their principals sent over the railroad. The court say:

"Whatever objection to these rebatements might be made by the State, or by planters and others who did not obtain like favorable terms, it does not lie in the mouths of stockholders or creditors, who reap positive benefits from the arrangement, to complain of it. Their doing so is calculated to raise a suspicion that they are solicitous about other interests than those which they have in the property of this road." (P. 335.)

In the opinion of the Receiver, and to all ordinary apprehension, the vote of this subsidy to the G., H. and San Antonio Railroad, by the city of Gal-

veston, was the very crisis of the G., H. and H. Railroad. It was to be sold in December following.

The Receiver testifies that his efforts were successful in preventing the construction of said parallel road, and that the property in his hands was prevented from being largely impaired in value. (P. 46.)

Does it lie in the mouths of creditors, whose only hope of funds for payment was in receipts from the operating and sale of this railroad, to raise the question with the Receiver, when it seems palpable that not only the sole object but the effect of the expenditures by the Receiver was to increase the fund on which they were dependent? To impose the loss of these expenditures thus made, on the Receiver personally, seems a very harsh and severe measure of justice.

The extent or limits of authority to be exercised by a Court with respect to the management of property in the hands of its Receiver must depend, and can only depend on the circumstances in which a court shall find itself placed. Principles are plain where the circumstances are such as often occur. But I do not find that the courts have ever undertaken to circumscribe themselves in the exercise of their utmost powers, or their best discretion, with respect to the protection and advantage of property which they take in charge.

In a previous stage of this case the Receiver applied to the court for authority to obtain an ad-

ditional legislative charter and build a new connection through the city of Houston. The court, on the ground of the early decision of the case, as matter of prudence and fairness, declined to confer the power, but there is nothing to impress on the mind of the Receiver that his functions were alone to operate from day to day the property put in his hands, and did not embrace a comprehensive, enlightened view of the interests and management of the franchise in his charge, or that such plans and schemes were beyond the legitimate functions of the Court.

With respect to this particular Receiver, the court in that case says (p. 350):

"In this connection it is proper to remark that the whole transaction which took place before Justice Swayne, on the 19th of April, 1869, by which the defendants agreed that the complainants, by giving security to the amount of $350,000, should have the possession and management of the property, and name the Receiver, places the defendants in a somewhat different attitude towards that officer from what they would be in if he were appointed by the court in the ordinary way."

I submit to the court, that the previous instructions in this case to the Receiver could not have left on his mind the understanding, when this subsidy proposition came up and had to be met immediately, that his duty was that of passiveness and nonresistance.

In Kennedy vs. St. Paul and Pacific Railroad Company, 2 Dillon, 454, a Receiver was appointed

to extend, complete and equip a railroad, borrow five millions of dollars, and give a lien on the road.

In Davis vs. Gray, 16 Wallace, 203, this court say:

"A Receiver is appointed upon a principle of justice for the benefit of all concerned. * * He is virtually a representative of the court and of all the parties in interest in the litigation in which he is appointed. * * In the progress and growth of equity jurisdiction, it has become usual to clothe such officers with much larger powers than were formerly conferred. * * It is not unusual to put them in charge of the railroad of companies which have fallen into financial embarrassment, and to require them to operate such railroad until the difficulties are removed or such arrangements are made that the roads can be sold with the least sacrifice of the interests of those concerned. In all such cases the Receiver is the right arm of the jurisdiction invoked."

Citations need not be multiplied. In the English chancery this assumption of railway management has been disclaimed as belonging, under any circumstances, to the equity power, because of the inadequacy of the court to fulfil the duties it would impose.

But our courts, with more comprehensive views of their powers, undertake, as in this case, the possession and management of a railway and its franchises for a period of five years, in a new State, greatly disordered by civil war; its governments, State and municipal, affording doubtful security for rights, but tempting fields for speculations, through legal forms.

In such a condition, the Receiver found the value of the property and franchises under his management completely imperilled. The exigency was

immediate and extreme. He had to choose between what seemed to him the most criminal dereliction or the plain performance of duty. I think his action was such as the court, if in session, with full knowledge of the facts, ought to have directed. Otherwise, this equity railway management is the swallowing of camels and straining at gnats. Admitting it to be true, however, that he went beyond the boundary which the court will prescribe, the motive and effect was to increase the funds under his management, and I submit, to throw this loss on him personally and reject his accounts, after they have remained near three years unobjected to, is not a ruling to be deliberately adhered to.

Second—The court erred in directing the payment for lost goods, damage to property, etc., amounting to say $7,575 61, out of the balance of the funds found due by the Receiver, instead of applying that balance to the remaining sum allowed the complainants for their expenses and costs in the case.

The case shows, that when the sale of the property, under the decrees of the court, was completed, a decree was then made, December 15, 1871, by which, after the distribution of funds received from the sale, there remained due the complainants, under its decree at the May term, 1871, $36,023 47.

The provision made by that decree for the payment of this class of claims for lost freight etc., was that the purchaser should file "his undertaking in this court in this cause, in the sum of fifty thousand dollars, obligating himself and his assigns to

pay all claims that the Receiver is not in funds to pay, that may be allowed by the court against the Receiver for loss or injury to property or to the person." (P. 29.)

This decree must be the test of the liability of the purchaser on his undertaking filed in the cause. (See pp. 31, 32.)

Admitting, then, that there is a fund of $20,993 14 in the hands of the Receiver, which is liable towards the satisfaction of the above balance of $36,023 47, and also for the claims for lost property, etc., the latter claims will not be permitted to be paid out of that fund, but will be required to be satisfied out of the undertaking of the purchaser of the property provided by the court for that purpose. If the claims for lost freight, etc., can resort to two funds, and the complainants for their expenses to only one, the former claims will not be permitted to come first on the fund of the latter.

This is familiar doctrine, and the case seems a most reasonable one for its application. (1 Story's Eq. Jur., ch. XIII, §633, *et seq.*)

The language in the undertaking of the purchaser, "or for expenses allowed by the court," can not be understood to apply to the balance of $36,023 47 to complainants, because this is wholly beyond the province of the decree requiring the undertaking, and is not the reasonable intent of the language.

No objection had ever been made to the decree of December 15, 1871, by any of the creditors for

lost freight. They were proceeding under it. There was no application by any party to rehear it; but over two years subsequently, the court decrees payment out of the fund in the hands of the Receiver. It is submitted that this was beyond the power of the court on a subsequent decree, and was inequitable.

Third—The court erred in directing the payment of $2,500 to John C. Bullitt for his fees and expenses as solicitor and counsel of the trustees in the first and second mortgage bonds.

The service rendered was the institution of a suit in 1860, which was not further prosecuted, the trustees having died, and the records and papers in the case having been destroyed by fire during the war. (Master's Report, 180.)

The present suit of the bondholders, brought in 1867, had no connection with the suit of Bullitt, and was brought without any allegation or evidence of even a knowledge of it.

The claim of Bullitt seems to have been filed in the court March 30,1868, but no notice of it served on any party, and no proceeding in the court whatever in regard to it until December 16, 1871, when it was referred to the Master.

Order for its payment was erroneous in this case:

1st. Because the final decree rendered in this cause, August 16, 1869, affirmed by the Supreme Court May 1, 1871, made distribution of the fund in this cause with which the said payment to Bullitt

is inconsistent. (See the decree—pp. 3, 7—copied above in this brief.)

The distribution was—

1st. To the defendants, the R. & P. E. Association and the Junction Railroad Company, for use of their property by the Receiver, and all sums properly due by the Receiver, or any other person acting under the authority of this court, or by its order, upon order for payment thereof.

2d. Proper costs of this cause.

3d. Expenses of the individual complainants in prosecuting this cause for the benefit of all parties interested.

4th. To the holders of the mortgage bonds according to their priority.

It can not admit of dispute that the claim of Bullitt was not embraced in either of these classes.

The finding of the Master was only that the claim of Bullitt should be "deducted from the amount coming out of the trust fund to the bondholders of the first and second mortgages." (p. 180). But the court ordered its payment prior to the amount coming to the complainants as their allowance for expenses, etc., in the prosecution of the suit. This was plainly repugnant to the first decree affirmed by the Supreme Court.

I submit that it is the settled law of this court (as of all others) that upon the rendition of a final decree, and its affirmance by the Supreme Court, all subsequent proceedings in the Circuit Court must be in conformity with that decree.

Sibbald vs. United States, 12 Pet., 488; West vs.

Brashear, 14 Pet., 51; Washington Bridge Co. vs. Stewart, 3 How., 413; Corning vs. Troy Nail Factory, 15 How., 451; Roberts vs. Cooper, 20 How., 467; Ex parte Dubuque and Pac. R. Co., 1 Wal., 69.

12 Peters, 492, the court say:

"The inferior court is bound by the decree as the law of the case, and must carry it into execution according to the mandate. They can not vary it or examine it for any other purpose than execution, or give any other or further relief; or review it upon any matter decided on appeal for error apparent; or intermeddle with it further than to settle so much as has been remanded."

The court could equally as well have established the lien of some new mortgage or claim set up after the mandate, as the lien in favor of Bullitt; and had just as much power to establish a priority for Bullitt over the Real and Personal Estate Association and Junction Railroad as over the lien in behalf of the complainants.

2d. The claim of Bullitt was, obviously, a claim against the bondholders, to be worked out only through and under them. Out of any funds to come to them, it might possibly have been consistent with the power of the court, and with the final decree, affirmed by the Supreme Court, to have ordered payment to him. But he had no claim or lien of any other character.

The decree affirmed by the Supreme Court directs payment of the "expenses of the individual complainants in prosecuting this cause for the benefit of all parties interested; and that *the remainder* of said proceeds shall be distributed among the several holders of the mortgage bonds," etc.

Bullitt's equity was, that he rendered certain services to the trustees for the mortgage bonds, and that out of any fund coming to the bondholders, his claim could be paid. He had no lien which could have standing in any court, independent of the receipt of funds by the bondholders. And neither consistently with the mandate of the Supreme Court, nor with any principle of equity, could there be any lien prior or superior to that of the complainants, in behalf of Bullitt.

3d. The case shows that the complainants actually expended in this cause, cash, with interest, $35,515 56, (pp. 27, 28,) of which they were re-paid $16,669 88, (p. 29,) leaving balance, which, with interest to May 29, 1874, date of decree appealed from, would have covered the amount found to be in the Receiver's hands. Under that decree, however, the complainants are not re-paid out of the fund any portion of this balance of cash actually expended, but after paying court expenses, etc., it is applied to the claims for lost freight, for which complete and specific provision was made by the undertaking of the purchaser of the railroad, and then to Bullitt for his attorney's fee in a previous cause which was abated and abandoned. It is submitted that this decree was not in accordance with the powers of the court, or with equity.

W. P. BALLINGER,
Of Counsel for Appellants.

In the Supreme Court of the United States.

No. 85.

N. A. COWDREY *et al.*, APPELLANTS,

vs.

THE GALVESTON, HOUSTON AND HENDERSON RAILROAD COMPANY *et al.*

Appeal from the Circuit Court of the United States for the Eastern District of Texas.

BRIEF FOR APPELLEES.

R. T. MERRICK,
For Appellees.

Judd & Detweiler, Printers.

In the Supreme Court of the United States.

No. 85.

N. A. COWDREY *et al.*, APPELLANTS,

vs.

THE GALVESTON, HOUSTON AND HENDERSON RAILROAD COMPANY *et al.*

Appeal from the Circuit Court of the United States for the Eastern District of Texas.

BRIEF FOR APPELLEES.

This is the second appearance of this case in this Court. It was originally a suit for the foreclosure of certain mortgages made by the Galveston, Houston and Henderson Railroad Company; and the original decree, which was affirmed here, was for a foreclosure. The subsequent proceedings, which are now here for review, arise upon the account ordered in that decree to be taken of the funds in the hands of the receiver, N. A. Cowdrey. The Master in Chancery, to whom the case was referred, refused to allow the receiver credit for certain expenditures claimed to have been made by him to the amount of $14,029.15, for the purpose of defeating the efforts of rival interests to procure a subsidy for the construction of a road parallel to that in the hands of the receiver, and which was deemed by him to be injurious to that which he managed. The receiver admitted assets in his hands to the amount of $6,963.99, and he was thereupon charged with the amount of $20,993.14.

The Master allowed certain claims against the road for goods lost in transit, damage done to property, &c., while it was operated by the receiver, to the amount of $7,565.61, and these claims were given priority over those of the mortgagees.

The Master also allowed the claim of John C. Bullitt, Esquire, for professional services to the trustees in a prior attempt, interrupted by the war, to foreclose the mortgages. The claim was for $5,000; but the court, in its decree, cut the amount down to $2,500.

The Master's account was confirmed by the court, and from its decision on the points mentioned, as well as from its failure to make any allowance to the complainants for the sum of $36,023.47 claimed to be due them, as evidenced by previous orders of the court, Mr. Cowdrey appeals, both for himself as receiver and as complainant, and for his co-complainants.

I.

It seems to be scarcely necessary to adduce argument in support of the decision in the court below and of its Master in Chancery refusing to allow the receiver credit for the $14,029.15 spent by him to defeat legislation, or contemplated legislation, in favor of a rival line. That a trustee should be allowed all reasonable and legitimate expenses incurred by him in preserving the trust property under his charge is, of course, admitted. That he should be allowed proper attorney's fees and counsel fees we will also admit. But for "professional services" of the kind evidenced by the vouchers in this case, (see printed pages 34 and 42, 43 and 44 of Record,)—services commonly known as "lobbying"—this Court has decided in the case of Child *vs.* Trist, (21 Wallace, 441,) that even a private individual cannot recover; and certainly no court will warrant its own officer in making any such disbursements out of the funds in his custody.

We do not propose to occupy the time of the Court with anything more than this mere statement of the point.

II.

It seems to be almost equally unnecessary to waste argument on the second ground of exception taken by the appellants, the priority allowed by the decree below to the claims for damages and for property lost while the road was in the hands of the receiver and operated by him. It would be a most singular thing that the road should be run entirely in the interest of the company or of the bondholders, and that it should escape all liability to third parties for its operations during the pendency of the suit. It might just as well be argued that the employees of the road, pending the suit, should not receive their wages as prior claims out of the earnings, but should come in *pro rata* with the bondholders or stockholders.

III.

The only point in the case which has any appearance whatever of substance is as to the allowance of $2,500 to John C. Bullitt, Esq., for professional services rendered by agreement to the trustees in 1860 and 1861, and this, we submit, has only the appearance, and not the reality, of substance.

The facts, which are proved by the testimony of Mr. Bullitt himself and that of Mr. D. W. Gillett, (pages 175 and 176 of the Record,) and which there is no attempt whatever to controvert, are stated by the master in his report (p. 179 of Record) to be as follows: "John C. Bullitt, the inter-
"venor, was employed by the trustees in the first and second
"mortgages on the Galveston, Houston and Henderson rail-
"road, foreclosed in this suit, to foreclose the same in 1860,
"the coupons for interest on the bonds secured by said
"mortgages having fallen due and been dishonored for more
"than sixty days; that the trustees agreed to give him a re-

" taining fee of five thousand dollars; that said Bullitt en-
" gaged in the service of said trustees, and did come from
" Philadelphia, where he resided, to Galveston, Texas; that
" he did commence an action in the circuit court of the
" United States, in Galveston, by filing a bill in equity,
" (Exhibit D,) and had process issued therein, in which he
" sought to foreclose the mortgage of 14th December, 1853,
" for $1,500,000; and also the mortgage of June 1st, 1855,
" for $750,000. The defendants were served with process
" and issue made on demurrer to the bill, when the suit was
" interrupted by the civil war, in 1861, and during said war
" the records of the court were destroyed by fire, and the
" trustees died; that upon the close of the war the intervenor
" took steps to continue the suit, * * * * * * and
" while engaged in correspondence with the representatives
" of the trustees about renewing the suit brought by him to
" foreclose the mortgages, this suit was brought by Cow-
" drey, and James, and others, without consulting inter-
" venor, and the same has been prosecuted to judgment
" without the assistance of the intervenor."

Upon this state of facts the Master finds that the claim of the intervenor to the fee contracted to be paid by the trustees is good as against the *cestuis que trust* in the mortgages; that he rendered actual service, and was ready and willing to perform his part of the contract, and was prevented from so doing by the war, in the first instance, and subsequently by the action of the *cestuis que trust* themselves in proceeding without him, and without the trustees or their representatives. That his decision was correct is abundantly supported by the authority of this court, and of all other tribunals that have passed upon the subject.

Trustees have an inherent equitable right to be reimbursed all expenses which they reasonably and properly incur in the execution of the trust, and it is immaterial that there are no provisions for such expenses in the instrument of

trust. Thus, a trustee will be reimbursed all reasonable fees paid for legal advice in the discharge of his duties.

Perry on Trusts, Sec. 910.
Brady *vs.* Dilley, 27 Maryland, 570.
Green *vs.* Putney, 1 Md. Ch., 262.
Laroque *vs.* Candolle, 4 Md. Ch., 347.
McElhenny's Appeal, 46 Penn., 347.
Burr *vs.* McEwen, Baldwin, 154.
Johnson *vs.* Telford, 3 Russell, 477.
Fearns *vs.* Young, 10 Vesey, 184.
Noyes *vs.* Blakeman, 6 N. Y., 567.

It makes no difference that the trustees in this case did not actually spend any money for legal services. If they had made such expenditures and were entitled to have them reimbursed to them, they were entitled to contract for such services, and their contracts would be binding against the trust estate; if they were entitled to pay for attorney's services rendered, they were entitled to retain attorneys, and to contract for their fees; and such fees would become a lien upon the trust estate just as in any other case.

Now, if the trustees (if living) would be entitled to this allowance, the attorney himself may intervene directly and claim it. There cannot be any difference whatever in principle between the appropriation of a certain amount of the trust fund to the trustee for the payment thereof to their attorney and the appropriation of that sum directly to the attorney. It is unnecessary to multiply words on a point as plain as this.

But it may be argued that the trustees never reduced the property into possession, and that the suit instituted for that purpose failed of effect. The answer to this is, that such failure was not due either to the trustees or their attorney, but to causes entirely beyond their control, the existence of a state of war and the subsequent death of the trustees, and also the destruction of the records by fire. The attorney

had done all that lay in his power, and was ready to recommence and prosecute the suit, when the beneficiaries under the mortgages interfered with his further connection therewith. To say that he shall not be paid now, would be grossly inequitable.

It has been decided that, if a trustee has not the means in hand to defray the expenses of the protection of a trust fund, he may effectually charge such expenses upon the future income of the estate; and that, where the trustee, after creating such charge is removed, and a new trustee appointed, the trust estate in the hands of the new trustee remains subject to the charge.

Noyes *vs.* Blakeman, 6 N. Y., 567.

And this Court, in the case of Paschal, (10 Wallace, 483,) held, that an attorney has his lien for his fees on moneys collected in any suit or proceeding covered by his retainer.

R. T. MERRICK,
For Appellees.